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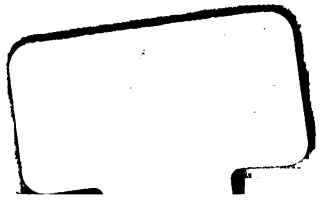
AN
(Smith W.)
Delaware



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(Smith, W.)
Deferred

Hon: George Bancroft
with compliments of
the writer.

WILLIAM SMITH

JUDGE OF THE SUPREME COURT OF THE PROVINCE OF NEW YORK

WILLIAM SMITH—THE HISTORIAN

CHIEF JUSTICE OF NEW YORK AND OF CANADA

BY MATURIN L. DELAFIELD

Reprinted from "THE MAGAZINE OF AMERICAN HISTORY," of April and June, 1881

WILLIAM SMITH

JUDGE OF THE SUPREME COURT OF THE PROVINCE OF NEW YORK

William Smith, ancestor of the New York colonial family of Smith, made illustrious in the persons of Judge and Chief Justice Smith, served in the army of the Commonwealth. At the close of the great civil war he removed from his birth-place and residence in the Isle of Ely, Cambridgeshire, England, and settled at Newport Pagnell, Buckinghamshire, where he died about 1682. His wife, Elizabeth (Hartley), whom he married 4th September, 1661, lived until 1710, and was buried in the same grave with her husband in the aisle, on the south side of the font, of the parish church, Newport Pagnell.

James Hartley, the father of Elizabeth, was a younger son of William Hartley of Strangwicke Hall, the chief of one of the most ancient families of Lancashire. He (James Hartley) died 27th June, 1666, aged 63, at the same time with his wife, both victims of the plague which visited Newport Pagnell that summer. They were buried together in the parish church, and in the same aisle in which their daughter and son-in-law were afterwards laid to rest. Beneath the surrounding stones lie the bodies of many of the Hartley family. Among the memorial tablets was one "To the memory of James Hartley, who departed this life 27 June, 1666. Aged 63.

> No epitaph can make
> The just man famed
> The good are praised
> When they are only named."

At the west end of the Hartley aisle, chained to a desk, were three volumes, the Lives of the Martyrs, with a Latin inscription, signifying that these books were the gift of William Hartley in 1612.

William and Elizabeth Smith had issue five sons and one daughter: William, James, John, Samuel, Thomas, the father of the subject of the present sketch, and Christiana, who died young (see notes to this article, I to V).

Judge William Smith, the subject of the present sketch, was the eldest son of Thomas and Susanna (Odell) Smith. He was born at Newport Pagnell, England, on the 8th October, 1697, old style, and died in the city of New York 22d November, 1769. He studied the classics

under the Rev. Mr. Stannard, minister at Simpson, and Mr. Woodward of Newport, and the sciences under Mr. Litten of the latter place. With his father's family he arrived in New York 17th August, 1715, and shortly afterwards entered Yale College, where he was graduated in 1719, and from which college he received the degree of A. M. 12th September, 1722. At this period his inclinations, in which he was encouraged by his father, would have led him to devote himself to the church, but whatever profession was selected, he was bent upon pursuing his studies. The city of New York offered few facilities to a student, and returning to New Haven, Mr. Smith accepted the position of tutor or professor—he is mentioned by both names, although on the college catalogue entered simply as tutor—and acted as such from 1722 to 1724. Although but twenty-seven years of age, such was his reputation as a classical and theological student, so pure was his life, that he was offered the presidency of the college, made vacant by the retirement of the Rev. Dr. Cutler. The tempting offer was declined. Of the dead languages, Greek and Hebrew were his favorites, in both of which he was a ripe scholar; but the law presenting attractions which were irresistible, every spare moment was devoted to its study. Happily he found in New Haven wise counselors, and in his father an indulgent parent, who imported for him books of study and of reference, which were not to be had in the colonies. He was admitted to the bar 20th May, 1724, and on the 20th July following began to practice as a lawyer in the city of New York. He rose rapidly to eminence. Few cases of importance came before the courts in which William Smith was not retained, generally on the Whig side. His life, which remains yet to be written, is interwoven with the political and legal history of the times. Here but an outline can be drawn, with brief allusions to those prominent events which influenced his political career; the first of which raised him while still a young man to the highest pinnacle of popular esteem.

In August, 1733, James Alexander (who is said to have come to America in the same vessel with Mr. Smith) and Mr. Smith, having been retained by Van Dam in his defense against Governor Cosby, took exception to the composition of the Supreme Court, arguing that Messrs. De Lancey and Philipse were not legally entitled to seats, the law not having been properly complied with in their appointment. The plea gave great offense, and was never forgiven by the Court party. In April, 1735, the same gentlemen represented John Peter Zenger, editor of the popular New York Weekly Journal; Mr. De

Lancey having in the meantime been promoted as Chief Justice in the room of the distinguished Justice Morris, and Mr. Philipse advanced to the second place. Again exception was taken to the composition of the court. The Judges refused to allow or hear the exceptions argued, the Chief Justice in great heat exclaiming, "You have brought it to that point that either we must go from the bench or you from the bar." The counsel refused to withdraw their plea, and boldly stood on their rights; thereupon, 16th April, 1735, an order was issued striking the names of James Alexander and William Smith from the list of attorneys. Mr. Van Dam and Zenger, the printer, had in the opinion of the great mass of the population of the province been unjustly and harshly dealt with; the treatment of the two popular lawyers added fuel to the existing excitement. Both were gentlemen of the highest social position, of large means, of great private and public influence, and were supported by most of the influential families of the province. The party in power soon found that they had gone too far; in gratifying personal revenge and jealousy they had weakened themselves and strengthened the opposition. Justly did Gouverneur Morris declare that "the trial of Zenger in 1735 was the germ of American Freedom." There was, moreover, a disturbing doubt whether the angry Justices had not rendered themselves liable to personal damages. Neither Smith nor Alexander condescended to withdraw from the position taken. Worst of all, the Judges were taunted with ignorance of the law, and mortified by the ridicule of the opposition—ridicule that still survives in the pages of Smith's History of the Province of New York. In 1737 advances were made to the two lawyers, which, being frankly met, the order depriving them was cancelled upon the condition that they should forego any right of action for civil damages. To assist his party friends and to strengthen the popular cause, William Smith accepted, 29th September, 1736, the office of recorder under Mr. Van Dam. With this sole exception, until 1751, he kept aloof from official employment, confining himself strictly to his profession and his duties as a citizen.

Mr. Smith was appointed, 1748, in Governor Belcher's charter one of the incorporators of the College of New Jersey at Princeton, and is believed to have been also a trustee under the charter given by John Hamilton, President of the Council, in 1746. The historian of the college, President Maclean, inclines to the belief that William Smith prepared the first charter, and also the rough draft of the second one. He says of him that "to the end of his life he was the earnest friend of the

college, and one of the most honored and influential members of the board." Many of his immediate descendants, sons and grandchildren, were graduated at Princeton.

The indifference of the people of New York to their lack of facilities for education was, as it had formerly been to his father, a matter of surprise and solicitude to Mr. Smith. With the exception of those in holy orders, there are found in New York, during a period of many years, but two college graduates, natives of the province, Lieutenant-Governor De Lancey of Cambridge, England, and Judge Smith of Yale. In the city of New York the classical schoolmaster was left to starve. Judge Smith and his brothers had been forced to seek competent teachers in neighboring provinces; his sons were sent to Yale, to Princeton and to Europe. To their regret, other gentlemen of English origin, whose numbers were now rapidly increasing, were compelled to pursue the same course. As the worthy Dutch burghers, notwithstanding their wealth, would not support a pedagogue by their voluntary contributions, William Smith, William Alexander and some of the Morris family in 1732 petitioned the Assembly to establish a *free* school for teaching Latin, Greek and mathematics. The petition having been favorably received, the school was established the same year, under the care of Alexander Malcolm. A commencement had been made, but much more must be done, and that promptly; something more than a grammar school was a necessity. As might be expected, William Smith is found foremost among the founders of King's College. With a liberality beyond the age, his wish was that the institution should be free from sectarian bias; in this expectation funds were easily collected by lotteries, and a yearly grant was promised by the Legislature. In November, 1751, trustees were appointed, composed, ex-officio, of Civil Magistrates, and James and William Livingston and Benjamin Nicoll. Presently it became apparent that the Court party purposed to divert the control of the college to the Episcopalians. The people took alarm, the press clamored in vain. Although the popular party represented nine-tenths of the population, they were overruled. Mr. De Lancey gained his point, but lost his popularity. There was no redress, except for the Assembly to withdraw a moiety of the funds collected, but this to the College was of little moment. Party spirit had been aroused. Trinity Church made a magnificent gift of real estate; wealthy Episcopalians, at home and abroad, furnished ready money. What at this time appears to be of little or no moment was at that period an absorbing political question. Well might the

Presbyterians dread the power of the Church of England, and resist what in their estimation became an entering wedge against their dearly won privileges. Their hard experience in England and Scotland was fresh in men's minds. The immense number of Scottish emigrants from the north of Ireland, driven out by persecution, morally and physically a splendid race, could not forget their sufferings; most of all, could not forget the prelatist taunt that their offspring were bastards. As the Romanists denied the validity of Episcopal orders in the Church of England, so, in turn, the Irish Church establishment proclaimed that no apostolic power existed in a Presbyterian ministry to legally bind in wedlock. Unhappily they possessed the temporal authority to enforce their doctrine, and at times the home government lent their sanction to the monstrous claim. In Ireland, for many years, in the eye of the law the Romanist and Presbyterian stood on the same ground; neither were acknowledged, both were permitted to exist. The dominant Church, however, conceded to a foreign priesthood the miraculous gift to bind, if not to loose, but denied that the power could exist in a Presbyterian ministry. The pauper, peasant, perhaps dissolute priest, in virtue of his office possessed what the learned, pious, perhaps nobly born Presbyterian divine could never attain to. The lowest of the one was more exalted by the Anglo-Irish Church than the highest of the other. In Great Britain, Presbyterian honor had asserted itself with the sword; their rights were secured by Parliament. In Ireland their congregations were at the mercy of an intolerant clergy. Priestly folly, the curse of the lovely isle, forced her hardy population to seek refuge in America. The Presbyterian refugees certainly precipitated, perhaps turned the tide of war which gave freedom to a continent.

In former days many of the great nobles, with some few of the clergy—Knox, Bishop of Rappo; Dr. Usher, Primate of Armagh, who is styled in Wadrow's Biographies "not only ane learned, but ane godly man, although ane bishop," with some others, had protected the Presbyterians against the hostility of the Church. Old friends removed by death were not replaced by new ones, or the sympathy which is accompanied by active aid was withheld, because of the Jacobite principles attributed to the Scotch and Irish Presbyterians. The refuge America extended was more and more availed of. Each vessel that arrived at New York added strength to the national party, and rendered the Court clique more impotent of harm; the brief "Golden Age" of the Tories was passing away. Presently, as the High

Church Tories, with increasing wealth, increased their pretensions, prominent men in neighboring Connecticut were heard to say in public, that "another Oliver might arise," and soon after, as Dr. Peters records, the fame of Governor Tryon was increased, because he was reported to have recommended to the British Ministry the Presbyterian Livingstons and Smiths, with the Dutch Schuylers, as the best subjects in New York. These were men who could neither be bought, flattered nor terrified. As Englishmen, they would have their rights, and in the end were justified and honored both at home and in England; and this too, whether in the approaching struggle they adhered to the mother country or to the colonies.

In 1754 Messrs. Smith, Philip Livingston, William Alexander (Lord Stirling), Robert R. Livingston (the Chancellor), William Livingston (Governor of New Jersey), John Morin Scott and others, assembled at the residence of one of their number, believed to have been that of William Smith, arranged a plan for a public library, and collected for the purpose £600, with which to make a beginning. Under Governor Tryon a charter was obtained. The library then founded is now represented by the New York Society Library.

In 1751 William Smith was appointed by Clinton, Governor of the province, without solicitation on his part and in most flattering terms, Attorney General and Advocate General, and was sworn in 31st August, 1752. The same year he was recommended to the seat in the Council made vacant by the death of Sir Peter Warren. The Governor's letter, addressed to the Lords of Trade, and dated 24th October, 1752, adds the significant testimony, that Mr. Smith was "the only lawyer who would and did consent to prosecute Mr. Oliver De Lancey, brother of the Chief Justice." That the "Golden Age" was then at its prime is shown by the fact that the recommendation of Governor Clinton to remove Chief Justice De Lancey from his office was not complied with by the home government. Pursuant to a mandamus of the King, William Smith was sworn in on the 30th day of April, 1753. Singularly enough, among his unsuccessful competitors for the office is found this same Mr. Oliver De Lancey. Mr. Smith remained a member of the Council until shortly before his death, when he was succeeded by his eldest son.

In 1754 Mr. Smith was appointed one of the four representatives from the Province of New York to the General Congress which met at Albany, and was the representative of the province to propose and receive plans for the Union of the colonies under one Government.

A few years later, 1760, he was offered by Lieutenant-Governor Colden, and declined, the office of Chief Justice, made vacant by the death of Mr. De Lancey. The offer was the more complimentary as it was made over the heads of three existing justices, Messrs. Chambers, Horsmanden and Jones.

In 1763 Mr. Smith accepted the appointment of Judge of the Supreme Court of the Province, and retained the office until his death.

Judge Smith was all his life a hard student. His learning and accomplishments were as thorough as they were varied. He was an excellent linguist, a theologian, a good mathematician and possessed some scientific knowledge. As a lawyer he stood among the highest in the provinces, and both as lawyer and judge was conscientious and painstaking. In every sense an Englishman, he possessed in an eminent degree that best of English qualities, an inbred determination to resist oppression and tyranny, whether exerted against himself or against his neighbor. Too late Great Britain acknowledged that men like him were, in the colonies, equally as at home her most desirable subjects. His person was commanding, his countenance full of intelligence; he possessed a strong constitution and uninterrupted good health. With unusual natural and acquired advantages, he was also endowed with a rare fluency of speech, a lively imagination, a most retentive memory and real eloquence. An obituary notice in the New York Gazette of 27th November, 1769, admits him to have been the most eloquent speaker in the province; in all of the provinces would have been equally correct. Whatever work Judge Smith undertook it became to him a pleasure, as well as a duty, to perform it thoroughly. But one portrait of the Judge is known to the writer to be in existence; this, painted by Wollaston in 1751, is preserved among his descendants in Quebec, Canada. From it the etching which accompanies this sketch has been taken.

Judge William Smith was twice married; first by the Rev. Mr. David de Bonrepos, minister of the French congregation on Staten Island, the service being performed in the French language, on the 11th of May, 1727, to Mary, daughter of Rene and Blanche (Du Bois) Het (see N. Y. G. and B. Record, 1880, p. 144, and Hist. Mag., 1868, p. 266, for some particulars of the Het family), by whom he had fifteen children. Mrs. Smith was born in the city of New York, 24th May, 1710, died 22d August, 1754, and was buried in the aisle of the Old South Church. Judge Smith married secondly on the 12th May, 1761, Mrs.

Elizabeth Williams, widow of Colonel Elisha ~~Williams~~ of ~~England~~ Conn^t, and daughter of the Rev. Mr. Thomas Scott of Nithern, Herefordshire, England, and later of Norwich, where he died about 1747. Mrs. Elizabeth Smith was born 17th October, 1708, and came to America with her husband, Colonel Williams, in 1751. The Historical Magazine, 1868, p. 267, states that, after the death of Judge Smith, his widow "returned to Wethersfield, and died there in the sixty-eighth year of her age." She had no issue by Judge Smith.

The children of Judge and Mary Smith were all well educated. They were proficient in French and Dutch, and possessed for the period and city in which they lived an unusual knowledge of English literature. The sons were familiar with the Greek and Latin classics; two, if not more of them, were good Hebrew scholars. They were educated in the Presbyterian faith, and were prominent members of that church. All adhered to the Republican party, and held to their father's conviction that as Englishmen, although born in the provinces, they were entitled to all and every one of the privileges and immunities enjoyed by their cousins at home. They were among and well represented the descendants of those who had curbed the tyranny of Charles the First.

As a family they were, by birth and training, tolerant of the religious convictions of others, and for this very reason were the more prone to take alarm at the very shadow of Tory and priestly practices as they spread over the new England and were fostered by some of the Governors. In opposition to the Court party of the several local governments, they warmly supported their father's views, to strengthen the country by the union of the colonies under one general government. Faithful to the British Constitution, they were aware of its faults, and believed that upon its model one more just and sound might be devised for the new English country. In this they anticipated some of the reforms which the people of England in after years added to their liberties.

MATURIN L. DELAFIELD

I. WILLIAM SMITH, known as "Port Royal Smith," and also as the "Uncle," to distinguish him from his nephew, Judge William Smith. Of his life and issue an account is given in the N. Y. G. and B. Record, Vol. X., p. 32. He died in New York City, 15th October, 1736, of apoplexy, *æt.* 74, leaving a grandson and heir William Peartree Smith.

II. JAMES remained and died in England; residing at Passenham, near Stoney Stratford, Buckinghamshire. He married and left sons and daughters.

III. JOHN emigrated to New York, where he married and lived many years. About the year 1714, he returned to England and died there, leaving a family in New York. Nothing is ascertained with certainty in regard to his issue. William Smith, a "cousin" of the judge and of the Rev. John Smith, whose death is recorded as having occurred 7th February, 1728, aged 30 years, may have been a son of his.

IV. SAMUEL settled in Jamaica, West Indies, probably moving there at the same time with his eldest brother, "Port Royal" Smith. He married in the Island, and died there soon afterwards, *æt.* twenty-seven years.

V. THOMAS, the youngest son, was born at Newport Pagnell, 18th September, 1675. He survived all of his brothers and his sister, and died in New York 14th November, 1745, and was buried at the plantation of his son Thomas, in Smith's Clove, Orange County, New York. Thomas married in England, 13th May, 1696, Susanna, second daughter of Thomas and Christiana Odell, of Northfield Meadows, Buckinghamshire, in which parish Mr. Odell owned a large estate, besides other landed property elsewhere. Thomas Odell died 13th May, 1698, aged 47 years; his wife, Christiana, died 7th July of the same year. Besides Susanna, married to Thomas Smith, they had a daughter Mary, who died unmarried, and two sons—John, who died in infancy at Newport Pagnell, and Thomas, who when of age inherited the Odell estates. This gentleman, "falling into grand company, and being a very agreeable person of wit and humor, was much solicited by the nobility and gentry, which took off his attention from his own affairs. He soon spent his estate and afterwards obtained a small office under the Duke of Grafton, the Lord Chamberlain, of £200 a year. He married the daughter of Sir Richard Everitt, and died, as I have heard, in 1749, leaving a daughter Penelope. Thomas Odell, the father, was buried under his seat in the church at Simpson; Christiana, his wife, John their son, Mary their eldest daughter, and Odell Smith, the youngest son of Thomas Smith and Susanna, his wife, lie buried in the church yard, before the South Porch of the same church and thereabouts, and in the church lie the dust of a train of ancestors, who have died in succession through many years." (From a note prepared by Chief Justice Wm. Smith, dated 9th December, 1796.)

Christiana, the wife of Thomas Odell, was a daughter of John Goodman, of Simpson, four miles from Newport Pagnell. Mr. Goodman possessed an immense estate in Buckinghamshire, transmitted, as was claimed, from the time of William the Conqueror, from father to son, the heirs with rare exceptions bearing alternately the names of Richard and John.

Thomas Smith also emigrated from England, but at a much more advanced age than his brothers. He sailed from London on the 24th May, 1715, with his wife and three sons, arriving in New York on the 17th of August following, bring-

ing with him if not wealth, at least a considerable fortune; a fortune sufficient to place him immediately among the substantial citizens of New York. His new home offered many attractions; still two things, in his opinion of vital importance, were wanting: schools or teachers to educate his sons, and the Communion of the Presbyterian faith. The first want Mrs. Smith and himself did in part replace, with the occasional aid, as is believed, of a tutor from New England; the second he resolved should not be of long continuance. Almost immediately upon his arrival, Mr. Smith employed himself in gathering together the members of his church, many of whom had previously, as they continued to do when absent from New York, worshipped with the Dutch congregation. He has the honor of being one of the founders of the First Presbyterian Church in New York. As early as October, 1716, a congregation, presided over by a resident minister, was assembled in the City Hall, and after 1719 in their own building in Wall street, a church built upon ground purchased and held in the names of Dr. John Nicoll, Patrick M'Knight, Gilbert Livingston and Thomas Smith. In 1722 a part of the congregation, under the leadership of Thomas Smith, withdrew for a short period from the Wall Street congregation, and called the excellent Jonathan Edwards as their pastor. During the eight months of his ministry, his home was at the house of Thomas Smith; of his intimacy with the family, some account is given in Edwards' own words, in the sketch of the life of the Rev. John Smith, which appears in the appendix to this article.

As old age approached Mr. and Mrs. Smith appear to have longed to return to the mother country and the bright fields of old England. With this in view, and intending to purchase an estate near Guilford, Mrs. Smith sailed in the Rebecca, Captain Banks, 7th December, 1728, and landed in England on the 15th of January following. At London she was taken ill and died there on the 9th of March, 1729, in the fifty-second year of her age. She was buried in the Church of St. Botolph, Aldersgate.

Thomas and Susanna Smith had issue four sons and several daughters. 1, William (the judge); 2, Thomas; 3, John; 4, Odell; Elizabeth and Martha, of whom some account appears in the appendix.

NOTE—In the possession of the Penn. Hist. Society there is a bound volume of the New York Weekly Post, 1744 to 1746, in which is found the book plate of William Peartree Smith. The arms and crest are the same as those upon the seal and book plate of Chief Justice Smith, the latter of which is here reproduced, but it has for motto Deus Nobis Haec Otia Fecit; a worthy device for an expatriated family which had served in the army of the Parliament. Beneath is the name, William P. Smith, A. M. This Mr. Smith was the only grandson and surviving issue of William (Port Royal) Smith, and inherited the estate of his grandfather. His father, also William, who died probably 7th February, 1728 (?) was first cousin to the Colonial Judge William Smith. According to the excellent genealogy of

this branch of the family by T. H. Montgomery, Esq., in the N. Y. Genealogical and Biographical Record, 1879, page 32, William P. Smith was born in 1723, and died 20th November, 1801, and on the same authority, this the eldest branch of the American Smiths appears to be now extinct in the male line.

ARMS OF SMITH

APPENDIX

IMMEDIATE FAMILY OF JUDGE WILLIAM SMITH

THOMAS SMITH, the second son of Thomas and Susanna Smith, was a farmer. But little authentic information has been obtained of him. He is said to have been a man of education, as indeed could hardly have been otherwise, considering the surroundings of his youth; and is believed to have entered Yale College, but his name does not appear in the catalogue of graduates. He owned property in or near New York City, and a large tract of land, which, or a part of which, appears to have originally belonged to his father, in what was then, from this family, known as Smith's Clove, the present town of Monroe, Orange County. It is recorded in the handwriting of his brother, the judge, under date of 25th January, 1725, that on that day Thomas announced his engagement to Miss Hannah Hooker, and another note states that Thomas' daughter Sadie, died 14th September, 1729, aged 25 months. Miss Hooker, the intended bride of Thomas, is called cousin by the judge, and may have been a sister of Mehetabel Hooker, who had married the Rev. John Smith, and possibly a grandchild of the John Smith, who in 1714 returned to England, leaving his family in New York. During the Revolution descendants of Thomas Smith are mentioned as living in Smith's Clove.

JOHN SMITH (Rev'd), the third son of Thomas and Susanna Smith, born 5th May, 1702, at Newport Pagnell; died at White Plains, Westchester County, 26th February, 1771. He was graduated at Yale College 1727, where in addition to his other duties, he occupied himself with the study of divinity and of the healing art, then or at a later period receiving the degree of Doctor of Medicine. Among the papers of his brother, the judge, is found the statement, that while still an undergraduate, brother John married at Guilford, Conn., 6th May, 1724; we are left in doubt as to the name of the lady; but of his family, we find that a son was born to him 22d March, 1725, that his daughter Molly, aged 17 months, died 3d September, 1729, and that a son John died 24th September of the same year, at Guilford. ~~At this place he appears~~ to have chiefly resided, for several years practicing there as a physician, but also at times in New York occupied with his profession. From this period his life and labors are traced by the Rev. Dr. Charles W. Baird, in his admirable History of Rye, from which the following is condensed. On the 13th December, 1742, Dr. Smith was ordained by a council of the Eastern Consociation of Fairfield County, which met at Rye, as minister of that place; here he removed his family and purchased a house, to the no small chagrin and displeasure of the Church of England missionary, who plaintively records the thoroughness with which the new minister entered upon his labors and increased his following. At a later period the churches at White Plains and also at Sing Sing were put under his pastoral care; he removed to the former village and continued, as he had done at Rye, to practice, when occasion required, as a physician to the suffering body as well as to the troubled soul. The authority already quoted gives Dr. Smith high rank as an "able, earnest and influential minister of the Gospel," as "a man of eminent piety, and of a very high order of intellectual capacity." His father, Thomas Smith, as previously stated, had been one of the founders of the Wall Street or First Presbyterian Church in New York City, and was among those who in the trouble of 1722 withdrew from the congregation and called Jonathan Edwards to preside over the flock. The famous preacher made his home in the house and with the family of Thomas Smith. "Edwards was then barely nineteen years of age, and John Smith but a little over twenty, and between those two young men there sprang up a friendship the most intimate and ardent; which we have reason to believe lasted for years and perhaps through life. They used often, Mr. Edwards tells us, to walk together on the banks of the Hudson, to converse on the things of God, 'and our conversation used to turn on the advancement of Christ's kingdom in the world and the glorious things that God would accomplish for his church in the latter days.' He speaks of his separation from his endeared friend and companion as one of the most bitter trials of his life" (History of Rye by Rev. Dr. Baird, p. 331). After nearly thirty

years of labor in the ministry Dr. Smith fell asleep among his people at White Plains, and was buried in the grave-yard of his church.

During the recent enlargement of the church, the rear of the building was extended over the grave and the upright slab removed further back; the inscription kindly copied by the present incumbent, the Rev. Mr. Heermance, is as follows:

Here Lies the Remains of the Revd
John Smith the First ordained Minister
Of the Presbyterian Persuasion in Rye
& the White Plains. Who was born in
England May 5: 1702: Wore out with
Various Labors & Fell asleep In Jesus
Deceased Feby. 26, 1771: Aged 68 Years: 9 Months & 22 days.

By Faith He Lived In Faith He Died & Faith
Forsees a Rising Day when Jesus Comes While
Hope Assumes & Boasts His Joy Among the
Tombs O Death O Grave Where Is Thy Victory
Thanks be to God which Giveth us the
Victory Through our Lord Jesus Christ

Near by are tombstones to the memory of his wife and of two daughters.

The History of Rye so freely used in preparing the above sketch gives the marriage of the Rev. John Smith as obtained from papers in the possession of his descendants. He married 6th May, 1724 (the same date as given in Judge Smith's memorandum) Mehetabel, daughter of James and Mary Hooker, of Guilford—her father being "a son of the Rev. Samuel Hooker and grandson of the famous Thomas Hooker." They had issue four sons and eight daughters, whose descendants are said to be numerous. Mrs. Smith died as appears from her tombstone Sept. 5, 1775, aged 71 years, 4 months and 5 days. One of the daughters, Susanna, married the Rev. Mr. Benjamin Tallmadge, of Brookhaven, L. I., and was the mother of Colonel Benjamin Tallmadge.

ODELL SMITH died young and was buried at Simpson as already stated.

The daughters of Thomas Smith and Susanna Smith all remained and died in England.

ELIZABETH, the third daughter, married Thomas Herbert, of Acton, Buckinghamshire, and had Thomas and others.

MARTHA, the fourth daughter, married Edmund Roberts, of Elrington, near Leighton Buzzard, Bucks and had Edmund, Thomas, John and perhaps others.

DESCENDANTS OF JUDGE WILLIAM AND MARY SMITH

WILLIAM SMITH, Chief Justice of New York and of Canada (known as the Historian), born 18th June, 1728. His life will make the subject of a separate paper.

SUSANNA SMITH, born 24th December, 1729; died 20th March, 1791; married 14th September, 1747, Robert James Livingston, merchant of New York (born 15th February, 1725; died 25th January, 1771), the eldest son of James and Maria (Kierstedt) Livingston, the feudal head or chief in descent of that family in America; and had ten children. As doubly first cousins to the children of Chief Justice Smith, a short account of their lives is given.

Mary Livingston, born 7th June, 1748, in New York City; died in London 6th January, 1830. She married, first, license dated 29th October, 1765, Captain Gabriel Maturin, who died in Boston, about 1774–6. Captain Maturin entered the British service 12th April, 1756, as a Lieutenant in the 35th Regiment, was promoted Captain 1764, and in 1768 transferred to the 31st Foot. He was appointed military and private Secretary to Sir Guy Carleton, Governor of Canada. Sir Guy returning to England, Captain Maturin, then in New York, was summoned to Canada and ordered to replace his chief in important military duties. His wife and a younger sister, Susanna, afterwards Mrs. Armstrong, accompanied him in his northern journey. Mrs. Maturin married, secondly, Dr. Jonathan Mallet, an Englishman, who had settled in New York, sometime prior to the revolution. His first wife, Miss Catherine Kennedy, whom he had married about June, 1765, license dated 13th of that month, died in New York 3d September, 1777 (N. Y. Gazette, 8th September, 1777), leaving three children.

Dr. Mallet's residence, which he had built adjoining the Kennedy house in Broadway, is reported as having been occupied by the British troops at the commencement of the war. (Note 1.) He appears to have been the fashionable and one of the most successful of the physicians of the period, and is described as an educated and very agreeable man. During the war, 1776, to 1782, he was Surgeon, for part of the time Chief Surgeon, and Purveyor to the hospitals for his Majesty's forces in America. In 1783 his name appears in the army lists as Chief Purveyor only, and the following year is omitted.

A letter from Mrs. Mallet, dated 1st July, 1784, now before the writer, tells of her arrival two days before, at London, with her husband and servants. After a passage of six weeks from New York, the Mallets, Mrs. Jauncey and another lady landed at Dover, where they met Lieut Mallet, a brother of the Doctor, who had also served in

America. At London, the Americans flocked to see them. Mention is made of Chief Justice Smith, of Thomas and Doctor James Smith, the latter in ill health, of Mrs. Plinderleith and her children; of Mrs. Kennedy, probably her husband's mother-in-law, who was very kind; of Miss Kemble, who was about returning to New York and would take letters. London was made very pleasant to Mrs. Mallet; her husband's social position was excellent, old friends numerous, new ones very attentive. Her extraordinary beauty, which she retained until far advanced in life, is not only a matter of tradition, but is eulogized in more than one letter now faded and yellow with age. A portrait by Copley, taken about the time of her marriage with Captain Maturin and now in the possession of one of her nieces, justifies the admiration expressed by her friends for her loveliness. Two of her nieces, celebrated for their personal attractions are said to resemble her.

In 1806 Mrs. Mallet became for the second time a widow, and although her thoughts turned towards her native land, and her letters overflow with affection for her kinspeople she could not separate herself from the new associations and her late husband's home; there she continued to reside until her death, which occurred 6th January, 1830. Except among her immediate family who were a long lived race, she had survived most of her contemporaries, but her interest in their children continued until the last.

Mrs. Mallet had issue by neither marriage. Her step children, the son and two daughters of Dr. Mallet by his marriage with Miss Kennedy, formed her family.

James Livingston, also called James Kierstedt Livingston, born 29th December, 1749, died unmarried 8th February, 1777, aged 27, and was interred in the burial ground at Princeton, N. J. Owing to an accident received in boyhood, he was an invalid and sufferer all his life.

Elizabeth Livingston, born 14th September, 1751, died 28th November, 1752.

Elizabeth Livingston, second of the name, born 6th October, 1753, died 15th October, 1756.

Colonel William Smith Livingston, born 27th August, 1755, died 25th June, 1794, and was buried in the family vault of Abraham Lott, N. Y. City. Colonel Livingston was graduated at the College of New Jersey, 1772. At the commencement of the revolution he entered the army and held a command at the battle of Long Island, where he was taken prisoner. Confined for a short time in the Sugar House, he was paroled and soon afterwards exchanged. He served throughout the war, and as Lieutenant-Colonel of Colonel Webb's regiment, greatly distinguished himself in Rhode Island under General Greene. His gallantry and reckless daring gained for him the soubriquet of "fighting Bill," a name preserved in a doggerel verse of the period. Colonel Livingston possessed great physical strength, and shared with Colonel Benjamin Tallmadge the reputation of being the handsomest officer in the service. He married in 1774 Catherine, daughter of Abraham and Gertrude (Cojeman) Lott, merchant of New York, but during the war a resident of Beverwyck, near Morristown, N. J. Mrs. Livingston died 29th September, 1823, and was interred in the Livingston family vault of the Dutch Reformed Church, Rhinebeck. They had eleven children, of whom seven died in infancy. One son, William Mallet, entered the navy and was lost at sea, unmarried; another son, Francis Armstrong, and two daughters, married and have left issue. To an agent from Europe who wished to induce them to take steps for the revival of family honors, now dormant, both the Colonel and his son declined taking any action; the former making the characteristic reply, "that he preferred being an American citizen to being a Scotch Lord."

Robert Livingston, born 29th August, 1757, died 8th September, 1757.

Susanna Livingston, born 30th July, 1758, died at Trenton, N. J., 13th February, 1851. Married by Dr. John Witherspoon, at Princeton, 22d August, 1782, the Rev. James Francis Armstrong. Dr. Armstrong was born 3d April, 1750; died 19th January, 1816. Graduated at College of New Jersey 1773. Trustee of the college from 1790 until his death. Studied divinity under Dr. Witherspoon, and was ordained by the Presbytery of New Castle January, 1778. Chaplain of the Second Maryland Brigade during the revolution. Secretary of the Society of the Cincinnati, 1790 to 1797. Pastor of the First Presbyterian Church at Trenton for 30 years. His useful and honorable life was spent in the service of his Maker and of his country, ably seconded by a most worthy wife. Their good works, the love and respect they inspired in both young and old, are cherished traditions throughout southern New Jersey, and their memories are held in honorable remembrance as among the worthies of the revolution. They had issue six children.

Robert James Livingston, born 5th November, 1760; died unmarried 12th April, 1827, at Grasmere, Rhinebeck, the residence of his brother, Peter R., and was buried in the family vault at Rhinebeck. He had prepared himself for and had probably matriculated at the College of New Jersey, when the British troops overran the State. Young Livingston, but sixteen years of age, accidentally learned that the American army was in motion and was secretly moving upon the enemy. He left home to join the vanguard of the Americans, and fell severely wounded at the victory of Trenton. Tradition states that he was wounded in the first onslaught and that for a few moments he was in the power of the Hessians, by whom he was roughly used. A lady, whose name unfortunately has not been preserved, had the lad removed to her house, sent for his mother and kept them until he could be carried in safety to his home at Princeton. Some years later an accident caused the loss of an eye. He went abroad and travelled in England and France. In New York he and his brother the Colonel were among the gayest of the men of fashion of the period; if somewhat wild, none the less popular, unless perhaps among the partisans and friends of Mayor Varick. But the life wearied him and he retired to his brother's seat at Grasmere. Fine natural abilities were sacrificed to the care of a farm, to his horses and gun.

Hon. Peter R. Livingston, born 3d October, 1766; died 19th January, 1847, at his residence, Grasmere, and was buried in the family vault of the Dutch Reformed

Church, Rhinebeck. Peter R. graduated at the College of New Jersey, 1784. For many years he represented Dutchess County in the Senate of New York, and was elected Speaker 7th January, 1823, and President 5th January, 1828. He was a member of the Council of Appointment under the first Constitution of the State and a member of the Constitutional Convention of 1821. He married Joanna (born 14th September, 1759; died 1st March, 1829, and buried by the side of her husband), daughter of Judge Robert R. and Margaret (Beekman) Livingston. They had no issue.

Judge Maturin Livingston, of Staatsburgh, born 10th April, 1769; died 7th November, 1847, at the residence of his son-in-law, Major Joseph Delafield, N. Y. City, and was buried in the Livingston vault of St. James' Church, Hyde Park. Judge Livingston graduated with the highest honors at the College of New Jersey, 1786; studied law and was admitted attorney; was one of the members from New York to the Constitutional Convention of October, 1801; was appointed 10th October, 1804, Recorder of the City of New York; and 3d February, 1823, Judge of the Court of Common Pleas for Dutchess County, being the first appointment for the county under the Constitution of 1821. He married 30th May, 1798, Margaret (born at Clermont 5th February, 1780; died at Staatsburgh 28th September, 1860, and buried by the side of her husband), only child of Major General Morgan Lewis and his wife Gertrude, daughter of Judge Robert R. and Margaret (Beekman) Livingston. They had twelve children, all of whom survived their father, married, and with one exception had issue.

—— SMITH, still born 24th February, 1730.

MARY SMITH, born 26th March, 1732; married 13th April, 1749, John, son of William Smith, and died 12th October, 1750, leaving an only child, Mary, born 17th July, 1750. John Smith does not appear to have been any relative of his wife; his father William is described in the N. Y. G. and B. Record, 1880, p. 145, as a mariner and merchant, and is styled Captain; he married first Gertrude, daughter of Justus Bosch, by whom he had the above John and others, and secondly Sarah, youngest daughter of Joshua and Blanche Het, and hence a sister of Mrs. Judge William Smith.

SARAH SMITH, born 3d August, 1733; died 12th October, 1815; married 31st October, 1755, Abraham Keteltas, minister of the Presbyterian Church at Jamaica, Long Island, and had issue. Thompson's History of Long Island, Vol. II., pp. 111, 113, contains an interesting account of the Rev. Mr. Keteltas, and states that he had eleven children, of whom only one survived at the date of that publication.

THOMAS SMITH, born 11th March, 1734, graduated at the College of New Jersey, Princeton, 1754. Licensed attorney 4th May, 1756 (Hist. Mag., 1868, p. 267). He was a member of the Whig Club, and prominent in his opposition to the illegal measures of Great Britain (Note 2); was a member of the Committee of Safety of 1st May, 1775, and of the Provincial Congress of the same year. He stood well as a lawyer, and enjoyed a large practice, both at the bar and in the management of estates. He married in New York, 22d November, 1758, Elizabeth Leinsen, or Lynsen, as spelled in the Baptismal Register of the First Presbyterian Church, and left a large family (Note 3).

ELIZABETH BLANCHE SMITH, born 13th December, 1736; died 11th December, 1817; married John Torrans, a merchant, from Ireland, who had settled in South Carolina, and had issue. Mrs. Torrans' tombstone in the graveyard of the Circular Church, Charleston, S. C., gives her name as Elizabeth B. Hatter Torrans (N. Y. G. and B. Record, Vol. VIII., p. 44).

JAMES SMITH, M. D., born 13th February, 1738; died in New York, 1812. Graduated at the College of New Jersey, 1757. He received his medical education chiefly in Europe, and was graduated Doctor of Medicine at Leyden. His published thesis for the doctorate, dated 22d August, 1764, was de Febribus Intermittentibus; the only copy known to be in America is found in a private library in the city of New York, and bears the impress of Theodore Haak, 1764, Leyden. "He is admitted (Dr. James Thatcher's Am. Medical Biog., Vol. I., p. 95) by all to have been eminently learned, though too theoretical and fanciful both as a practitioner of the healing art and in his course of public instruction." Dr. Smith was interested in the organization of the medical department of King's, now Columbia, College, and in 1768 was appointed to the Chair of Chemistry and Materia Medica, but resigned his professorship in 1770. Although an active and efficient member of the Whig party, at the commencement of the revolution, Dr. Smith removed to London, and there continued the practice of his profession. Among his patients, under date of 6th October, 1785, we find his brother, the Chief Justice. A few years after the peace he returned to New York. The Political Maga-

line, quoted in Smith's "Andre," is authority for the assertion that in London Dr. Smith was prominent in his devotion to his country. Jones' History of New York states, on the same authority, but a search has failed to identify with certainty the passage quoted, "that he was known in all the debating clubs for arguing against Great Britain in favor of America." Dr. Smith married (Hist. Mag., second series, Vol. IV., p. 266), about 1765–7, Mrs. Atkinson of Kingston, Jamaica.

ANNE SMITH, born 19th July, 1740, married [——] Bostwick of New York.

JOHN SMITH, born 20th August, 1741. Mentioned in Historical Magazine, 1868, p. 266, as an attorney.

CATHARINE SMITH, born 7th April, 1743; died 8th December, 1776, and was buried in the graveyard of the Circular Church Charleston, S. C. (N. Y. G. and B. Record, Vol. VII., p. 44). She married John Gordon, a Scotchman, who from London had removed to and settled in South Carolina. After Mrs. Gordon's death, and during or at the close of the revolutionary war, Mr. Gordon returned to Great Britain with his children, and died shortly afterwards in France, where he had accompanied an invalid relative. His children resided with and were brought up by their father's family. Two of his daughters, Mary and Jane Drummond, married brothers, James and Edwin Gairdner, and left issue.

MARTHA SMITH, born 18th June, 1744; married—license dated 30th September, 1763—Colonel Ann Hawkes Hay of the revolutionary army. His residence was at Fishkill, N. Y She left a large family.

SAMUEL SMITH, born 24th June, 1745; died, unmarried, at Charleston, S. C., 12th August, 1771, and was buried in the graveyard of the Circular Church there, *æt.* 26 (N. Y. G. and B. Record, VII., p. 44). His share in his father's immense real estate, and which it was supposed would become of great value, he bequeathed by will to his sisters, Mrs. Livingston and Mrs. Hay. This property, for many years after the revolution in the hands of trustees and their successors, was gradually dissipated, and proved of little or no value to the heirs.

MARGARET SMITH, born 19th September, 1747. She married, probably at a period subsequent to the execution of her father's will (her husband's name not appearing in the instrument, which is dated 24th May, 1769), Alexander Rose, a Scotch merchant, residing in Charleston, S. C., and had three sons and three daughters.

JOSHUA HETT SMITH, born 27th May, 1749, died (Hist. Mag., 1868, p. 267) in New York, 1818. He was twice married; first, license dated 13th October, 1770, to Elizabeth Gordon of Belvedere, South Carolina, who died in New York, 1st January, 1784, leaving two children.

Joshua Gordon Smith, born in New York, 7th August, 1771.

Sarah Gordon Smith.

He married secondly in England Anne Middleton (Hist. Mag., 1868, p. 267), who survived him, but does not appear to have left issue.

Joshua Hett Smith was bred to the law, and was licensed attorney 30th April, 1772. He practiced his profession with success, and prior to the revolution was regarded as one of the most promising young men in the city. In politics he espoused the Republican cause, and was among the zealous champions of constitutional liberty. He was not, however, in favor of a rupture with Great Britain, or of an entire colonial independence. As a member of the Fourth Provincial Congress, he carried out the views of his Orange county constituents, and opposed the ratification of the National Declaration of Independence. Prior to the battle of Long Island, Smith removed with his family to his country seat, Belmont, near Haverstraw (see Mag. Am. His., IV., 21, 1880, for an engraving and admirable article entitled "Smith's House at Haverstraw"), a retired situation, famous for its natural beauty, and commanding very extensive views of the Hudson River; in the neighborhood was his father's estate; and here also his brothers and other members of the family owned immense tracts of land. Smith's means were sufficient to enable him to indulge in the pleasures of hospitality. Courteous, personally a favorite, of excellent social position, married to an accomplished lady, his house was constantly full of guests, and a favorite place of resort for the officers of the army, French and American—to the former especially attractive, as their host was

conversant with their language. When the unscrupulous Arnold sought and obtained the command of West Point, social intercourse was naturally established between his family and that of Mr. Smith. Arnold employed every means in his power to ingratiate himself with Smith. If the proprietor of Belmont were found to be tractable, his house and its neighborhood would prove of great strategic importance in the contemplated negotiation and the future movements of the conspirators. The locality was well known to many British officers, especially to Major André, who had resided at Haverstraw as a prisoner after his capture by the American troops before the walls of Quebec in 1775. Arnold had won and betrayed the esteem of those who had befriended his youth and early manhood. Montgomery, Gates, Washington, were each in turn the victims of his hypocritical arts; was he likely to fail with a country gentleman, whose sympathies were with his countrymen, but who did not disguise his sympathy with the efforts of the peace commissioners, of whom his brother was one. The details of Arnold's plot, his failure, the part taken by Joshua Hett Smith are matters of history; the vexed question of Smith's innocence or guilty participation remains unsettled. Had West Point fallen, its garrison been taken, the momentous consequences to the patriot cause could hardly be exaggerated; necessarily, indiscriminate odium fell upon all who had in any manner participated in the plot. On Saturday, 23d September, 1780, at Pine Bridge, Smith bade farewell to Major André, whom he knew only as Mr. Anderson, not recognizing in him the gentleman whom a few years before he had met at the table of Colonel Hay, and took the northern road to Fishkill intending to join his family then visiting at the house of his brother-in-law Colonel Ann Hawkes Hay; the Colonel having married a sister of Mr. Smith. On the route he stopped to dine with Arnold, and in the evening at Fishkill supped in company with General Washington, with whom he was well acquainted. The next day, Sunday, he rode to Poughkeepsie and back. The day following, the 25th, was passed pleasantly with his family. That night he was arrested and carried before General Washington. From this date until the 22d May, 1781, seven long months, he was held a prisoner, often in want of common necessaries, constantly subject to indignities. Tried first before a court martial, he was presently transferred to the civil authorities; another tedious trial followed. From the little contemporaneous authentic data it would appear that both the military and civil courts were embarrassed with their prisoner and in doubt what to do with him. The more the matter was inquired into, the more probable it appeared that Smith had had no knowledge of Arnold's infamous purpose. Smith asserted that he believed Arnold to be engaged in a legitimate enterprise from which possibly an honorable peace might result. The testimony adduced, and his own conduct, bore witness to the truth of his assertions. On the other hand, in view of the part he had taken, of his intimacy with Arnold, how was it possible to believe him innocent? Smith tells us that on numerous occasions he was approached by soldiers and others, with offers to assist in or bring about his escape, but that conscious of innocence and distrusting the motives of those who offered their services, he forebore to make the attempt. It is not at all improbable that the puzzled authorities were the authors of the plan to rid themselves of a troublesome case; if so, their action was not without precedent during the revolution in the American army. Worn out with suspense, sick at heart, his sentence still delayed, Smith finally resolved to escape. A devoted wife arranged the details, her spirited conduct rendered them successful; throughout the whole sad business she shines in the bright, unsullied character of an affectionate, unwearying wife and comforter. Smith reached the British lines in safety, and in New York found protection at the house of his brother, the Chief Justice, where he was presently joined by his family (Note 4). Through Lieutenant-General Robertson, some of his own houses and others belonging to the family estate, occupied by the British as the property of absentees, were restored to him. In one of these he took up his residence and resumed the practice of his profession. On the 5th of November, 1783, he sailed in the transport Ann for Falmouth, his wife, worn out with the anxieties of the past few years, being

too ill to accompany him. On the first of the new year, as her husband sadly records, she died of a broken heart. The Royal Gazette of the previous month contains an advertisement for sale by auction of No. 7 Smith, now William Street, in possession of Joshua Hett Smith, and of a lot on the west side of Broadway, extending to the river. The sale was doubtless ordered to provide ready funds for the use of the exile. For several years Smith was a wanderer, his health broken and by many regarded as a proscribed man. In 1801 he had returned to America and is found travelling in South Carolina and Georgia. His work entitled "Smith's narrative of the causes which led to the death of Major André," was published in London, 1808, and has been severely criticised by writers on American history. In it the author does not hesitate to plainly express, often in an abusive manner, his opinion of those by whom he deemed himself wronged. Washington, the members of the court martial, and especially Lafayette, are accused of having prejudged his case and assumed his guilt. Nothing is more probable, and the charge may also be brought against the nation; with the information first obtained of the circumstances, it was impossible to do otherwise. That the English regarded Smith as the dupe but not the confederate of the astute Arnold is sufficiently proved by the miserable pension allowed him. Arnold was rewarded with wealth, honors and high military rank. Smith's pittance was not sufficient to provide for his family, who for a period at least were cared for by others. Had Smith been a partner in Arnold's infamy, his reward would have been proportionate, and wealth, not poverty, would have been his lot; in that case his widow would not have supported a precarious existence as a school teacher (His. Mag., 1868, p. 267). Great Britain is not wont to neglect those who venture all in her service.

NOTES TO APPENDIX

NOTE 1. Mr. William Kelby, the thorough and conscientious student of the history of old New York, who with rare courtesy is always prepared to aid those who follow in his footsteps, has furnished the writer with the following extract from a letter dated 12th April, 1776, in Almon's American Remembrancer, Vol. III., p. 86: "O, the houses in New York, if you could but see the inside of them! Occupied by the dirtiest people on the continent (for the empty houses are almost all taken up by the soldiers). Kennedy's new house, Mallet's, and one next to it, had 600 men in them. If the owners ever get possession again, I am sure they must be years in cleaning them, unless they get new floors and new plaster on the walls."

NOTE 2. Jones' History of New York places the sons of Judge Smith among the prominent constitutional leaders of the day, and to their credit no one of them finds favor in the sight of the Tory writer. Without reproducing the characteristic abusive language of that author, he states in substance, Vol. II., p. 7, that Alexander McDougal, Isaac Sears, John Lamb, Peter R. Livingston and the brothers Thomas, John and Joshua Hett Smith, were the principal leaders of the Republican clubs. Again, Vol. I., pp. 19 and 20, that Thomas and Doctor James Smith, with Judge Robert R. Livingston, his son Robert R. Jr. (the Chancellor) and others, gave efficient aid to the great triumvirate, William Livingston, William Smith and John Morin Scott, in the publication of the American Whig and Watchman. The writer regrets that he does not find other authority to connect the younger brothers of the Chief Justice with the distinguished gentlemen, who principally conducted the above publication.

NOTE 3. The following advertisement from Mr. Thomas Smith describing his seat at Haverstraw is copied from the New York Packet, November 15, 1781:

To be Sold or Lett, Immediately, The Farm on which the Subscriber now lives, at Haverstraw, in the county of Orange, within three miles of King's ferry. There is on the premises a new stone house, with six fireplaces, and good cellars under the whole; a compleat large barn, with proper hovels for cattle,—a frame house for an overseer, and a good garden, inclosed with a stone fence; 150 acres of meadow well ditched, and now in a mowable state, and as much more may be made with little trouble and expence; a sufficient quantity of woodland for fencing and fuel, and a young bearing orchard: The farm commands a large out drift for cattle, and a landing on Hudson's river, within three-quarters of a mile from the house. The situation in point of prospect, is equal to any in the State, and the most frequented public road to and from the eastern and western States, runs along the front of the farm; it is an advantageous stand for a farmer, merchant or innkeeper, and is an elegant situation for a gentleman's country seat: The farm is in tolerable repair, and a sufficient quantity of chestnut rails are already provided to put it into compleat order. The terms of payment will be made easy to the purchaser, and if rented the farming utensils, hay, grain, horses, cattle and hogs, with a quantity of household furniture, may be had with the farm on the most reasonable terms.

Wanted immediately by the subscriber, a small house, with twenty or thirty acres of land, either in the western part of New Jersey, or in the interior part of Connecticut; it will be either rented during the present war, or

purchased, or taken in exchange, as may best suit the owner. Thomas Smith.

November 12, 1781.

NOTE 4. With Jones anything which tended to the disadvantage of the Presbyterian Smiths was grist for the veracious History of New York; a history whose pretended facts are in great part extracted from contemporaneous Tory prints. If the authorities cited failed to express themselves with sufficient force, it was not beneath the Honorable Mr. Jones to supply what he deemed to be lacking. For instance, compare the following as copied from the Political Magazine, Vol. II., p. 62, 1781, with Jones' pretended quotations therefrom (he citing vol. and page) Vol. I., p. 385, and also p. 20—the latter assigned to the same authority and very possibly derived from the same item:

From the Political Magazine, Vol. II., p. 62. "*Circumstances respecting the betraying of Major Andre.*" When Major André went to consult with General Arnold, he was carried to the house of a Mr. Smith, brother to the Smith lately appointed Chief Justice of New York by Gen. Robertson, and also brother to a Dr. Smith, who lately lived in Downing Street, Westminster, and who is said to have gone off the morning that the soldiers fired on the rioters, and whose negro woman was hanged for being concerned in the burnings. While Major André was communicating with General Arnold, he lived at the house of Smith, and wore Smith's clothes, and when he set out from Washington's camp Smith attended him till within about twelve miles of Kingsbridge, where André told him he knew his way perfectly well. Just after Smith left him, he was taken, and, at that very time he had on Smith's clothes. Washington has tried Smith for being concerned in what they call Arnold's conspiracy; but the trial has turned out a mere farce; for Smith has not suffered any punishment. The people at New York therefore believe that Smith betrayed André to the rebels, and are of opinion he never can clear up his character anywhere but at the gallows.

From Jones' History of New York during the Revolutionary War—Vol. I., p. 385. "The Political Magazine, second vol., page, 62, speaks of this affair as follows: When Major André went to consult with General Arnold, he was carried to the house of a Mr. Smith. brother to the Smith who went off the morning the soldiers fired upon the rioters; his negro wench was hanged for being concerned in the burnings. While André was communicating with Arnold, he lived in Smith's house and wore Smith's clothes; upon his return, Smith attended him. Just after Smith left him at Tarrytown he was taken, and at that very time had on Smith's old clothes. He was tried for being concerned in Arnold's conspiracy. The trial turned out a farce, Smith was never punished. The Loyalists therefore believe that Smith betrayed André and are of opinion he never can clear up his character but under the gallows."

From Jones' History of New York during the Revolutionary War, Vol. I., p. 20. "The Political Magazine, in speaking of William Smith, the late Chief Justice of New York and now of Canada, says: 'The Chief Justice had a brother, one Dr. Smith, who lived in Downing Street; that he was an intimate of Silas Deane and of John the Painter, who set fire to the Dock Yard at Portsmouth, for which he was executed; that he was known in all the debating clubs for arguing against Great Britain in favor of America.'"

The Gentleman's Magazine for 1777, pp. 121–124, contains a "Narrative of the trial of James Aitken, otherwise John the Painter, at Winchester Assizes, for setting fire to the rope walk in his Majesties Dock Yard at Portsmouth, December 7, 1776." Before his execution on the 10th of March following, John confessed his crime and gave a statement of his life and wanderings. These are in part confirmed by other witnesses. The account and a comparison of the dates sufficiently dispose of Jones' so-called quotation, Vol. I., p. 20. The animus and value of the quotation on page 385 is confessed by its departures from the original.

The Gentleman's Magazine of July, 1780, page 343, mentions the trial and execution of Charlotte Gardiner, a black woman, for active participation in the Lord Gordon riots. The Political Magazine, Vol. I., pp. 497 and 500, gives other details of Charlotte, mentions the disposal of her remains and place of burial, and states that the "black woman was almost in rags." No one of these notices allude to Dr. Smith. Had the woman been a slave of or belonged to a prominent American, residing in London, the sensational writers would not have failed to have given prominence to the fact. A year later the last mentioned periodical asserts that the woman belonged to Dr. Smith, and that the Doctor is said to have gone off the morning that the soldiers fired on the rioters. Jones asserts, Vol. I., pp. 20 and 21, that Dr. Smith, "a person of strict Republican principles, a professed enemy to monarchy, a strict independent, a hater of Episcopacy," etc., etc., "left England and fled to Brussels, in Flanders." The writer is without documentary evidence to prove where Dr. Smith resided immediately after the Lord Gordon riots, which occurred in June, 1780, but soon after that time he is mentioned and described as living in London and occupied with the practice of his profession.

The baptismal registry of the First Presbyterian Church of New York opens with the entries of the dates of the births and baptisms of the children of Judge William and Mary Smith. These, as printed in the New York Gen. and Biog. Record, Vol. IV., p. 99, present three variations from the copy of the family record in possession of the writer. The birth of the eldest daughter, Susanna, is entered as on the 24th December, 1728, in the family bible 24th December, 1729; her elder brother having been born 18th June, 1728, the latter is beyond dispute the correct one. Mary and Elizabeth Blanche are entered respectively as born 24th March, 1731, and 18th December, 1736; the family Bible gives the dates as 26th March and 13th December of the same years.

Wm Smith

[illegible] CHIEF JUDGE OF CANADA [illegible] AND [illegible]

WILLIAM SMITH—THE HISTORIAN

CHIEF JUSTICE OF NEW YORK AND OF CANADA

WILLIAM SMITH—THE HISTORIAN

CHIEF JUSTICE OF NEW YORK AND OF CANADA

William Smith, "the historian," Chief Justice of New York and of Canada, was born in the city of New York, 18th June, 1728, and died at Quebec, Canada, 3d December, 1793. Inheriting his father's character and studious disposition, he made the best use of his time both at school in New York and at Yale College. The study of Hebrew, in which language he had already made some progress under the instruction of his father, was pursued at college, and there too he studied medicine, a science for which many of his family exhibited a natural taste and talent. He was graduated in 1745, and immediately entered his father's office, studying law, together with William Livingston, the future war governor of New Jersey, and was admitted to the bar 22d October, 1750. Forming a partnership with Livingston, the young lawyers almost immediately enjoyed a large and lucrative practice. Trusted, respected, admired for their talents, clients sought them not only from their own, but from the adjoining provinces. The son of Mr. Smith, writing of his father's career as a lawyer, says: "If he saw a cause was unjust, he would state that it was so, and if the litigant parties persisted in their respective views, he would desire them to seek another counsellor; if he found a cause doubtful, he always advised his client to compromise. When differences were referred to him, which he settled, he would receive no reward, though offered it by both parties, considering himself in these cases as a judge, observing that a judge ought to take no money."

Smith's religious belief and political faith were those of his family. His convictions were decided; his character straightforward and sincere; his temper singularly calm and under control; his eloquence, his power of application, his learning were undoubted. His address was kind and winning, one best calculated to make and retain through life devoted friends. Brought up in the midst of political excitement, the leaders of the great National party being allied with his father and generally intimate at his house, such a man, so situated, inevitably became himself a leader. There is scarce a chapter in the local history of the period in which his name does not appear. His life, as well as that of his father, is yet to be written; material is abundant. There is

probably not one of his contemporaries engaged in civil pursuits whose biography would be more instructive. In a brief memoir it is difficult to select what to touch upon, what to leave unsaid. His literary labors,[1] his interest in the Church, in the boundary disputes, his legal successes and opinions, cannot in these short notes be even alluded to.

In February, 1767, Governor Moore writes to England, that William Smith is at the head of his profession of the law, and requests that he may be appointed to a seat in his Majesty's Council in the room of his father, the Judge, who with advancing years desired to retire. The proposal was immediately complied with, Mr. Smith receiving the appointment the same year. Sincerely attached to the country of his birth, Mr. Smith was none the less devoted to his sovereign. The dissensions between Great Britain and the Colonies gave him intense sorrow, especially as he was fully conscious of the injustice with which his fellow countrymen were treated. On intimate terms with the leaders of both factions, it became the business of his life to endeavor to soothe the violence of party feeling and to reconcile their differences. Naturally he won the ill will of some few of the extremists among the citizen tories, who with narrow minds would acknowledge no right except on their own side, and naturally too, as time advanced and neutrality was no longer possible, some of the whigs, disappointed in securing his great talents exclusively for their cause, abused him as a trimmer, a term applied to many a conscientious statesman, both before and since. An instance of this kind of abuse appeared in the Pennsylvania Evening Post of 17th September, 1780; it is given in the notes to this article.[2] So long as there was any hope Mr. Smith strove to bring about an adjustment. Even as late as the close of 1775, through his brother Thomas, a member of the Provincial Assembly, he endeavored to "open a plan towards reconciliation, under the form of instructions to the delegates for this Province (New York) at Philadelphia." He had at an early period prepared and urged a proposition for the union of all the colonies under one administration, firmly bound to the mother country, containing guaranteed concessions, which it was hoped would terminate the chief causes of irritation. The plan was approved by the British Ministry, but was not brought before Parliament.

Nothing is found to justify the assertion in Sabine's Loyalists that Mr. Smith was undecided which side to choose. His large estate, his nearest relatives, his many and devoted friends were in America; his allegiance he believed to be irrevocably pledged to England. He does not appear, even in the midst of his family distresses, to have wavered

for a moment. All of his sympathies may have been with the individual rebel, none were with the rebellion that severed the new from the old England. The important principles for which the Americans took up arms he knew to be right and just; he had himself advocated and advanced them; the mode in which redress was sought was quite another affair. He could agree with his friend, Joseph Hallett, by whom he was probably enlisted in an effort to revive in the city the Presbyterian form of worship during the British occupation, that to maintain their rights some for the good of all must expose themselves to loss of property, to imprisonment, to banishment; but he could go no farther, and events moved rapidly. He denied the right of rebellion, and questioned the advantage to the colonists of independence. The infamous pretensions of the high tories were presently crushed as Parliament conceded the vital points in dispute, and through their peace commissioners, of whom Smith was one, exhorted the nation to return to their allegiance. Meanwhile, however, independence had been declared, moderate counsels prevailed too late to be of service; but the counsellors were held in grateful remembrance. Smith had, in season and out of season, well maintained the cause of British constitutional freedom, but had held back from the rebellion. A powerful minority in England, which in time included the whole nation, justified the revolutionists as the exponents of the true English policy. In the colonies the principles of the constitutional liberties of England were being successfully defended. A century has passed. Tories on the American question must now be sought for, not in England, but in the United States, men who sigh for the halcyon days of British rule and military law, when the young men served in the loyal Provincials, when the maids were courted by the gallant redcoats. Twice since the revolution has the tory party reappeared; in the war of 1812–14 and in the late rebellion. They had opposed the formation of the government; they and their children were too often not ashamed to seek its disgrace and destruction.

Soon after the arrival of Sir Henry Clinton the bitter feelings aroused at the commencement of the revolutionary war began to subside, and the contest was conducted, at the north at least, with few of the atrocities generally attendant upon civil strife. The British officers and soldiers rarely exhibited any personal ill will towards the patriots; friendly communications were constant; acts of kindness from foe to foe known to all. It was reserved for the traitor Arnold and his tory native associates, largely assembled in New York, to indulge in hatred, and the longing for the wholesale massacre of their countrymen; to reproach the military that

no terrible slaughter and devastation were committed as an example and warning. The tories affected to despise the patriots; their insulting language, which found no favor among the more intelligent of the British, justly offended the Americans. It is fortunate, lest the virulence of the class should be forgotten, that one of their number deemed his opinions of sufficient value to be preserved in writing, and that the New York Historical Society has consented to stand as sponsor for the publication of the volumes, thus giving the work sufficient notoriety.

The manuscript of Judge Thomas Jones, after the lapse of almost a century, is with much parade presented to the public as a "History of New York during the Revolutionary War." It deals with persons and incidents, not as they were, but as the author with perverted mind chose to think they were or would have liked them to have been. Fraud, crimes, perjury, cowardice, murder, meannesses of every sort are attributed to those whom tradition, history, and the common consent of the world, have placed among the blameless heroes and founders of a mighty nation. Their leader, Washington, of course does not escape being pointed at as a knave. We may smile at the Tory abuse of American statesmen, soldiers and gentlemen; their lives are known, their reputation established; they need no defence. Ladies, the wives and mothers of distinguished men, are not forgotten in the indiscriminate abuse; they may not easily be protected from posthumous slander, their lives belong to the home circle and fireside; even to assert that they were free from guilt is more than objectionable. We may well imagine that on this one point alone the Honorable Mr. Jones has attained his object, and has wounded the feelings of the descendants of those whom he hated. The *History* was written for anonymous publication. The author, bred an attorney, and a Judge of the Supreme Court, pretends an ignorance of the law, and in volume II., page 105, actually says, "I am no lawyer." The better to conceal his identity, the misfortunes of Thomas Jones, a zealous loyalist, are made much of. Jones, a man of wealth, was the most prominent member of a Long Island family, some of whom were members of the Church of England, some Quakers. Owing to his extreme party views, he was, after imprisonment, banished the country, and his estates confiscated. His "veracious" history was written in England, while in exile. Its publication under his own name would beyond question have forfeited not only his hopes for a pardon, but his social position; this was not to be thought of. Through his agent in New York Mr. Jones applied, 12th February, 1790, to the Legislature of the State

for permission to return to the country. His name was accordingly inserted in a bill passed 30th March, 1790, permitting the said Jones, with others, "to return and remain within this State unmolested, any law to the contrary notwithstanding."[3] The editor of Jones' manuscript appears to have overlooked the pardon, and states that "had it been possible he (Jones) would have come back to his loved home across the sea, and spent his last days beneath the bright skies and in the pure air of his own Long Island." Jones received his pardon, but did not come back; he was better employed preparing a posthumous revenge upon his enemies. Before the revolution Judge Jones had failed to obtain a re-election by the people of his OWN Long Island to the Assembly. During the war he was, as he informs us, persecuted and cruelly used by his countrymen, slighted by the English in America and neglected abroad. Small return was made him for confiscated property, no public office was conferred upon him. Other Americans, prominent citizens of New York and adherents to the Crown, were, he thinks, equally guilty as himself, and yet enjoyed their property undisturbed. The Smiths, Livingstons and many others, with whom he had enjoyed official intercourse, were honored and possessed wealth and happiness—he unknown, in ill health, childless, poor and in exile. It was more than the Judge could bear; hinc illæ lachrymæ.

This long digression may be pardoned, as Judge Jones devotes many of his pages to the Smiths, whom, if possible, he hates with a more malignant hatred than he does the Livingstons. With these two families his volumes open, and as he warms to his work he concentrates his abusive epithets on Chief Justice Smith; not only was Justice Smith the chief of his name, but his wife was a Livingston. The climax is reached with the assertion that this "artful, cunning, designing, hypocritical *Presbyterian* rebel," by whom Sir Henry "Clinton was absolutely governed," caused by his advice the loss of America to the British Crown.

As the political horizon grew darker, and recourse was had to arms, Mr. Smith felt that farther intervention on his part was unavailing. Early in the spring of 1776 (29th March), as was his yearly custom, he left town for his country seat at Haverstraw, and did not revisit the city during the summer.[4] Under date of 24th September, 1776, Governor Tryon wrote to Lord Germain that Smith had not been seen or heard from in five months. The Governor himself had withdrawn, not, however, with Smith's approval, on board the man-of-war Duchess of Gordon, leaving the members of the Council to retire where they

pleased. Malice, aroused by jealousy, pursued Mr. Smith in his retirement. Of the many slanders, the following is selected as a specimen, because Mr. Smith deemed it of sufficient importance to authorize a denial or reply:

From the Connecticut Gazette and the Universal Intelligencer, Sept. 13, 1776, *No.* 670, *page* 2.

LONDON, *June* 10—The following letter is said to have been sent to Gen. Howe, in America, from a member of the Council at New York:

NEW YORK, May 11, 1776.

Sir. As I have not a doubt of my last letters to Administration convincing them that this city and province is the only spot in America for carrying on the war with effect against the rebels, and that in consequence the forces expected this spring, as well as those now under your command, will be ordered hither, it may be necessary and advisable to send the army thro' the sound, between Connecticut and Long Island; of the latter it will be proper to give a description.— It is 130 miles long, is very fertile, abounding in wheat, and every other kind of corn, innumerable black cattle, sheep, hogs, &c:; is very populous, and Suffolk county in particular, as well as the other parts of it, all good and loyal subjects, of which they have lately given proof, and only wait to be assisted by the king's troops. The Island has a plain on it, at least 20 miles long, which has a fertile country about it, is 20 miles from the city of New-York; Connecticut opposite to it; New Jersey about 30 miles distant; Philadelphia 110; Maryland 130; Rhode Island 150: so that in this fertile island the army can subsist without any succour from Britain or Ireland, and in 5 or 6 days invade and reduce any of the above colonies at pleasure. Add to these great advantages, that the possession of the Narrows, and Nutton-Island, would be the destruction of this city, but of this I think there would be no need, for all the principal inhabitants are at heart with the crown, particularly all my brethren the members of the assembly, but as the mob now commands, prudence forbids them to declare without a military force. You have many with you who are acquainted with the navigation of the sound. The spot which I advise you to land at is Cowbay. W. SMITH.

From the Connecticut Gazette and the Universal Intelligencer, October 4, 1776, *No.* 673, *page* 3.

DOBB'S-FERRY, Sept. 19, 1776.

Mr. Green. As I understand you have republished a letter in your paper, which was reprinted from a London paper, and *said* to be written by the Hon. William Smith, Esq., I beg leave to inform you that it is a forgery; and I doubt not was written by some of the Refugees in England, with a view to render Mr. Smith's situation as disagreeable as their own was. The letter will not prejudice Mr. Smith in the opinion of those who knew him, but the natural and just jealousy of the times may lead those who are unacquainted with him to form an unjust idea of him. I doubt not, therefore, that, in justice to injured innocence, you will publish the following extract from a letter written by Mr. Smith, respecting the letter above mentioned, and insert a paragraph requesting the printers, who have already published, or may yet publish the forgery, to print this too— It is dated the fourth inst. I am, Sir, your humble servant, EBEN HAZARD.

Extract of a letter from the Hon. William Smith, Esq.

——"The artlessness of the author of the letter in the Baltimore Journal of the 28th of August is very apparent. Indeed, as the forgery was contrived in England, he could not know of my removal from New York on the 29th of March— You will observe that the printed letter is dated there the 11th of May, and that the writer supposes himself a Member of the Assembly. I have not been in town since March, and never was in the Assembly. These mistakes in personating me render

the fraud manifest. There are other marks of it—No man who knows me will imagine that, after my asserting in the history of New-York (page 205) that Long Island was one hundred and twenty miles long, and Hempstead plain but sixteen, will suppose me the informer that the island is one hundred and thirty miles in length, and the plain twenty-four; and that I am so ignorant of America as to place New-Jersey at fifty miles from Long-Island, and Rhode Island at one hundred and fifty, and Maryland but thirty from Philadelphia; or that I should believe the people of Suffolk, and especially the Members elected but last spring, to be well affected to the measures now under the direction of Gen. Howe.

I am not fond of oaths to remove groundless suspicions, or I should enclose you an affidavit that I never wrote a letter to Mr. Howe upon any subject whatsoever, nor to any man living in the smallest degree similar to the letter in the Maryland Journal. Such an affidavit I will publish, if it is necessary, for the satisfaction of my countrymen; after which, as Mr. Howe is upon the spot, no man can believe the calumny, who does not think me both a fool and a knave."

Information having been lodged against Mr. Smith, his name was entered among the first upon the list of suspected persons, prepared 15th June, 1776, by the committee, to detect conspiracies. The members of the committee present were Philip Livingston, Joseph Hallett, John Jay, Thomas Tredwell, Governeur Morris, Lewis Graham and Leonard Gansevoort. Most, if not all, of these gentlemen, were personal friends of Mr. Smith; with Livingston, Hallett and Morris, he was intimate. On the 27th June, the committee, of whom there were then present Leonard Gansevoort, Mr. Livingston, Mr. Randell, Mr. Morris, Colonel Graham, Mr. Tredwell, "Ordered that a summons be issued to the Hon. William Smith, as a person of equivocal character, returnable on Saturday, 6th July next, at 10 o'clock in the forenoon of the same day." What then followed is not known, the journals of the committee to detect conspiracies not being found among the public archives. Smith, however, addressed the committee in writing under date of 4th July, with an expression of his political opinions, and doubtless appeared in person, as directed to do, on the 6th. Smith's letter, or a copy of it, is believed to be in existence, but where, or by whom possessed, has not been ascertained. Whatever may have been the decision of the committee, Mr. Smith was allowed ample leisure to remove with his family and furniture from his seat at Haverstraw to the Livingston Manor, where, doubtless in accordance with the orders received, he took up his residence. Here (Mag. Am. His., July, 1880, p. 21), he is found writing to Schuyler in December, 1777, for books: "Anything, French or English, provided it be neither law or mathematics, nor anything in favor of a Republican form of government."

On the 7th March, 1777, the Provincial Congress ordered that all disaffected persons, etc., should either take an oath of allegiance or retire within the British lines. Smith, not having taken the oath, was sum-

moned before the convention. The generous treatment he received as having been misrepresented or misunderstood is best told in the language of the minutes of the Convention.

June 7th, 1777. "Present, Colonel Van Cortlandt, Mr. Hobart, Mr. Harper, Major Tappen, Mr. Cuyler, Colonel de Witt, Mr. Cantine, Mr. Gilbert Livingston, Major Van Zandt, Mr. Jay, Mr. Yates, Mr. R. R. Livingston, General Scott.

The council being informed that William Smith and ——— Paterson, Esquires, are attending in town, pursuant to the order of the 3d instant. *Ordered*, that the Secretary wait on Mr. Smith and request his attendance in Council. Mr. Smith attending, was by order asked the following questions from the chair, to wit. Whether he considers himself a subject of the independent State of New York. He desires that what follows may be accepted as his answer.

That he does not consider himself discharged from his oaths of fidelity to the Crown of Great Britain. He refers to his letter of the 4th July last, in answer to a summons of a committee of the Honorable Congress for an elucidation of his political sentiments. He has strictly conformed to his parol in that letter, nor will infringe it. He then conceived a separation from Great Britain could not be contended for with safety, to the rights, liberties, and privileges of this country; and from a deep concern for the colonies, he prays God that peace may be restored by a happy, safe, and generous reconciliation."

The Assembly adjourned to meet in the afternoon, and thereupon

"*Resolved*, that the said William Smith and John Patterson be confined within the manor of Livingston on their parole of honor, to abide there until the further order of this council, or the future executive power of this State; and in the mean time neither directly nor indirectly, by words or deeds, to oppose or contravene the measures of the United States of America, or either of them, for supporting their independence in opposition to the King and Parliament of Great Britain, or for supporting the present Constitution or government of this State.

Ordered, that the President take their paroles, which were accordingly taken, by them respectively subscribed, as follows, to wit:

"*State of New York*, ss.:

I, William Smith, Esquire, do hereby pledge my parole of honor, to abide within the manor of Livingston until the further order of the Council of Safety, or the future executive power of this State; and in the meantime that I will neither directly nor indirectly, by word or deed, oppose or contravene, the measures of the United States of America, or either of them, for supporting their independence in opposition to the King and Parliament of Great Britain, or for supporting the present Constitution or Government of the said State. WM. SMITH."

It was not enough to exempt the prisoners from the operation of the general law, which decreed that the disaffected should retire to New York; on the 9th the order was so far extended "as to permit Smith and Patterson to go into and pass through the east camp and to attend divine service at Red Hook in the Rhinebeck precinct." (Jour. Prov. Con., Vol. I, p. 961).

Smith in no wise attempted to conceal that he did not favor the rebellion; it is probable, however, that some may have thought, inasmuch as he admitted that the Americans had many just causes of griev-

ance, he might be brought to admit the right of rebellion, and be induced to join the patriots. This was not the opinion of the proprietors of the manor in which he was confined, or of any who knew him intimately; in their estimation an important point was gained in holding Smith aloof from the British, and thus depriving them of the value of his counsel and popularity.

As the year drew towards its close, many causes, domestic and financial, rendered it important for Mr. Smith to return to New York: doubtless also the life of inaction wearied him, and the time appeared to have approached when his services as mediator might prove acceptable to both parties. An admirable letter to the Provincial Congress, requesting that he might be relieved from confinement, is entered in full on the journal of that body, and is as follows:

MANOR OF LIVINGSTON, 9th November, 1777.

GENTLEMEN:—I have hitherto borne up against the misfortune of being a prisoner in my native country, from a consciousness that I have ever sought her welfare, and a persuasion that the measure owed its origin not to any suspicion of my enmity to her interests, but to views of general expediency. Being an enemy to no man I have a pleasure in believing no man to be mine. But whatsoever was the motive of it, my imprisonment is painful. It traverses my private interest, and does violence to my humanity, and tenderest offices of affection. I wrote, therefore, lately to Governor Clinton, to prevent my being longer separated from my estate at Haverstraw, where I have relations who are great sufferers, and my presence is wanting for their succor, and the recovery, if possible, of my plundered effects. But I have a further wish, and that is to repair to the capital, not only to answer a call upon me for aid from my daughter in England, but to gratify my own desire, to contribute towards abating the acrimony of the present war, and exciting to overtures of peace. I flatter myself, that though you may perhaps suspect the event will be a lesson to my vanity, you will nevertheless perceive the impossibility that any efforts of that kind will be injurious to the public. Except furniture, my servants and such conveniences as I shall want for my family in town, I leave everything else in the power of my country. All I have upon earth is here, as a pledge of my attachment to her interest. If she is happy, I am satisfied. I must share her fortunes. If she is ruined, so am I. I am, gentlemen, your most obed. servant, WM. SMITH.

The Congress assigned no reasons, but simply resolved that William Smith's request be not granted.

In the meanwhile a committee of the Provincial Congress of New York had been appointed to draft a constitution for the new State. Jones' History of New York (Vol. I, p. 143) states that the author was "assured from authentic authority, brought from the rebel country," and what is more to the purpose, the editor of the work positively asserts (Vol. I, Note XLVII, p. 643) that "William Smith *was* consulted out of doors and *did* much of the drafting of the instrument." No authorities are cited and confirmation of the story has been sought for in vain. Still many of the members of the committee were personal

friends of Mr. Smith; some of them were, at the time, in constant social intercourse with him, and it is far from improbable but that, overwhelmed with public business, they desired and sought the aid and counsel of the great lawyer. If he were asked, we may entertain no doubt but that his assistance was cheerfully rendered. The anecdote, honorable alike to both parties, is an instance, as pleasant as it is rare, of personal regard and consideration remaining unbroken in the midst of civil war.

The Boston Mirror, a periodical published in 1808–9, contains a notice of a very similar character, but of greater interest. Without acknowledgment, the article is in part reproduced, verbatim, in Sabine's Loyalists, and has since, more or less contracted, appeared in various publications. In full it is as follows:

"The following is related to us by Doctor Mitchell himself, and we vouch for its authenticity.

"*Anecdote of Wm. Smith, Esq., the historian of New York, and late Chief Justice of Lower Canada, recommended to American historians.*

This eloquent man, having been an adherent to the royal cause during the revolution, left the City of New York in 1783, with the British troops, and was afterwards rewarded by his sovereign with a high judiciary office in Quebec. Judge Smith, although thus removed from the place of his origin, always contemplated the politics of his native country with peculiar solicitude. One evening, in the year 1789, when Dr. Mitchell was in Quebec, and passing the evening at the Chief Justice's house, the leading subject of conversation was a new federal constitution, then under the consideration of the States, on the recommendation of the convention which sat in Philadelphia in 1787. Mr. Smith, who had been somewhat indisposed for several days, retired to his chamber with Mr. Grant, one of the members of the legislative council, at an early hour. In a short time Mr. Grant came forth and invited Dr. Mitchell, in Mr. Smith's name, to walk from the parlor into Mr. Smith's study and sit with him. Mr. Mitchell was conducted to a sofa and seated beside the Chief Justice, before whom stood a table supporting a large bundle of papers. Mr. Smith resumed the subject of American politics; untied his papers. After searching among them awhile, he unfolded a certain one, which, he said, was written about the time the colonial commotions grew violent, in 1775, and contained a plan or system of government, sketched out by himself then, and which nearly resembled the constitution afterwards proposed by the Federal Convention of the United States. He then read the contents. The piece was long and elaborate, and written with much beauty and spirit; 'this, sir,' added he, after finishing it, 'is the copy of a letter which I sent to a member of Congress in 1775, who was an intimate friend of General Washington. You may trace to this source the sentiments in favor of a more energetic government for your country, contained in the commander-in-chief's circular letter, and from this there can be no doubt that the citizens of all the States derived their leading hints for your new form of government. Thus, you see, the great and original outlines of your national constitution were drawn by a man whom the laws of his native land proscribed and forced away from its shores.'"

The Chief Justice drawing near the close of his life still exhibited an engrossing interest in the land of his birth; what interested her, interested him. Great Britain had goaded the Americans to rebellion, and

repented when war only could determine the issue. Smith was among the few who saw right on both sides; that of his countrymen to resist tyranny, that of the British to maintain her lawful authority. However much he might regret the result of the war, it occasioned him no bitterness. The prosperity of the new nation rejoiced him; her people, who had indeed proved their British origin, were also his people in blood and affection.

It was not until the summer of 1778 that Mr. Smith was relieved from his parole, and ordered to remove to the City of New York. He was sent with his family, under a flag of truce, conducted by Colonel Burr, and brought with him, or received soon afterwards, much of his household furniture. According to Jones' History of New York (Vol. I, pp. 146–7), every consideration was paid to his comfort; his furniture, library, servants, chariot, horses, etc., came with him, and the bearer of the flag had orders to stop on his way down the Hudson, at Mr. Smith's country seat and bring away what he might wish to remove. We may hope that the statement is true, and that Mr. Smith had the sad satisfaction of again visiting his river home, although it was dismantled and plundered. Many friends greeted Mr. Smith's return to New York, while, beyond the British lines, many of the patriots felt assured that they had now in the city a fellow-countryman, high in the estimation of the public enemy, who could and would tell the truth concerning them.

On the 30th of June, 1778, the committee to detect conspiracies, appointed by the Provincial Congress, issued a sentence of banishment against Mr. Smith. That such a decree had been passed, and that its object felt hurt and aggrieved, at what he esteemed to be unwarranted severity, was well known, but with the disappearance of the minutes of the committee the record was lost. It has been reserved to Mr. B. Fernow, of the office of the Secretary of State at Albany, in his researches, to discover the original document. It is found in a bound volume of manuscripts relating to the Massachusetts boundary question. Unfortunately it is not dated, nor has the handwriting been positively identified. The document is endorsed "List of Banished Persons," and is here reproduced.[1]

Soon after Mr. Smith's return to the city he was appointed one of the commissioners for restoring peace to the colonies, and in the following year was honored with the commission of Chief Justice of the Province of New York, in the place of Chief Justice Horsmanden, deceased.

The appointment was communicated to Mr. Smith on the 24th of

April, 1780. On the fourth day of May following *he was sworn into office in the City of New York, before his Excellency Governor Robertson.* In the appointment and in his installation to office no legal or usual form was omitted, and it is therefore difficult to understand the expression of the late learned Dr. O'Callaghan that it was "an appointment which has never been recognized" (Doc. Col. His. Pro. N. Y., Vol. VII, p. 910), or that of the historian Dr. Lossing, that "Smith was never really our chief justice" (Mag. Am. His., July, 1880, p. 33). Mr. Smith was chief justice, as had been his predecessors, under and by appointment of the British, and was by them recognized as such. Before his appointment, however, the Americans had declared themselves an independent nation, and were at the moment in arms to assert their sovereignty. Whether or not the civil appointments made by the British were to apply to the revolutionists depended upon the chances of war.

The elevation of Mr. Smith to the Chief Justiceship was made without regard to the claims for promotion of the existing justices, Messrs. Ludlow, Jones and Hicks. The rage of Judge Jones (the "veracious" historian already alluded to) knew no bounds. He may have been aware that the office of chief justice had been tendered to William Smith, Senior, but now the appointment was conferred upon William Smith, Jr. Having mentioned in his own peculiar forcible language the return of Mr. Smith to New York, and his appointment as Chief Justice, Judge Jones thus disburdens himself; Smith's character "remains much the same as it did in 1753, except only that after an experience of thirty years he has greatly improved in all that art, cunning, chicanery, dissimulation, hypocrisy, and adulation, which he possessed in so eminent a degree while a youth; and which ever was, and ever will be, the true characteristic of a person professing the religion of a New England *dissenter* and the politics of an English Republican" (Jones' His. of N. Y., Vol. I, pp. 167, 168). This extract is given as an instance of the extremes to which high church and Tory passion led, in this case stimulated by an all-devouring jealousy.

In New York Chief Justice Smith's influence was very great, both with the civil and the military authorities. Sir Henry Clinton and Sir Guy Carleton, the British Commanders-in-Chief, extended to him their fullest confidence; beyond the British lines many of his political foes remained his steadfast friends. When in captivity, his letters from New York were delivered to him unopened, by the order of the Provincial Congress,[1] and his property was not included among the confiscated estates.

At this time it is difficult to prove, but tradition asserts, and docu-

mentary evidence may possibly yet be found to support the belief, that Mr. Smith's acts of kindness to unfortunate prisoners of war were many and incessant. With his strong sympathies and fearless character he could not do otherwise: his high position and reputation enabled him to act without fear of compromising himself in an office where others of more timid nature and less established loyalty shrunk from exposing themselves.

On the 5th of December, 1783, Chief Justice Smith, with his son William, sailed for England on board of the frigate which conveyed the British commander-in-chief, and landed at Plymouth on the tenth of January following. In England his reception was most gratifying. Mrs. Smith, with her younger children, continued to reside in New York; letters intended for her are found addressed, in the early part of 1784, to the care of her ~~son-in-law~~, Dr. Mallet, Broadway, and at a later period to that of her ~~son~~ brother-in-law, Thomas Smith, counselor of law, Wall street. see p 271 see p 275

On the first of September, 1785, Mr. Smith was appointed Chief Justice of Canada, but remained in England until the following summer. We find him in London on the 27th of August taking leave of his friends, and on the 29th on board of the Thistle frigate, of twenty-eight guns, to sail that day from Portsmouth Harbor for Canada. On the same vessel was the general with whom three years before Chief Justice Smith had left the shores of America; Sir Guy Carleton, now Lord Dorchester and Governor-General of all the British provinces in America. Time had increased and cemented the friendship between these old friends. The party arrived at Quebec on the 23d of October, 1786, and there Mr. Smith was joined by his wife and children. Henceforth the chief justice continued to exercise the duties of his high office with honor to himself and to the court over which he presided, until stricken on the bench with a fever which in a few days ended his life. He was buried on the 4th of December, 1793, the day following his death, in the Episcopal Church, at Quebec.

Before his death, the act of attainder, which is mentioned as having been passed on the 30th of June, 1778, was cancelled, and the chief justice was again at liberty to revisit the land of his birth. The petition to the Legislature, praying for the reversion of his sentence of banishment, is signed by Andrew Bostwick and Colonel William Smith Livingston; it was passed by the Senate March 30th, 1790, and signed by George Clinton on the 3d of April following. The act includes the names of, and conveys a pardon to, James Jauncey, Abraham C. Cuyler, William

Smith, William Axtell, Richard Floyd, Henry Lloyd the elder, and, curiously enough, to Thomas Jones, who was then, as already stated, engaged upon his History. Copies of the petitions in favor of Chief Justice Smith and of Judge Jones, with a copy of the bill, are annexed in full, none of the documents having heretofore appeared in print.[8]

Those who study Mr. Smith's useful and honorable life, who have a knowledge of his family and social circle, will not be disposed to criticise the declaration of an only son, that the Chief Justice was "distinguished as a model of Christian perfection." Another authority declares that the great statesmen and soldiers of the revolution, while regretting that Mr. Smith had not made their cause his cause, found no fault with him, unless a righteous indignation against wrong was to be accounted a sin. His strong feelings and thorough convictions may on some occasions have led him, however deliberately, to express himself too earnestly in regard to the conduct of those Tories who lived on the bounty of unworthy Governors. If in his History of New York he may in some few instances have judged harshly of those who did act, or who were credited with acting, as tools or dupes of the court, he recorded what he and the nation believed to be the truth. Nothing was written in malice or to serve personal or party ends. If the Church of England is not exhibited in the beauty of her purity, she has but herself and a mistaken policy to find fault with, not the historian who records her acts and the attendant consequences.

Chief Justice Smith married, on the 3d of November, 1752, Jennet, a sister of his brother-in-law, and second daughter of James Livingston, of New York. She was born[9] November 1st, 1730, in New York, and died on the ninetieth anniversary of her birthday, November 1st, 1819, at the house of her son-in-law, Chief Justice Jonathan Sewell, Quebec, Canada. Chief Justice and Jennet Smith had issue ten children, an account of whom follows in the appendix.

MATURIN L. DELAFIELD

NOTES

[1] Smith's History of the Province of New York was written by the Chief Justice, not by his father, Judge Smith, as is stated in Jones' History of New York, Vol. I, note xii., page 436, and not in part written by the Chief Justice and continued by his son, the Hon. William Smith, as asserted in Sabine's Loyalists, Vol. II, p 312. The first volume was published by the author in London, 1757; the second volume by the New York Historical Society, 1826, and the two volumes, then first associated together in one edition, by the same society in 1829. To this copy is added a short but valuable memoir of the author, written by his only surviving son at the request of John W. Francis, John Delafield and David Hosack, publication committee of the New York Historical Society. Of the first (London) edition two large paper copies have of late years been discovered by Mr. Joseph Sabin, and sold by him at respectively $300 and $200.

There are several other editions of the first volume. One of these, published in Albany in 1814, contains a short, but well prepared continuation, sometimes attributed to the Hon. William Smith, but claimed by Hammond (Pol. Hist. of New York, Vol. I, preface p. vi.) to have been written by Dunlap. The Hon. Benjamin F. Butler, in an anniversary discourse delivered before the Albany Institute, 23d April, 1830, says that the continuation is "generally understood to have been written by Mr. J. V. N. Yates." However short the continuation and apparently hastily prepared, both the style and the knowledge of his subject exhibited by the author deserve that his name should be known and enrolled upon the list of American historical authors. There is also a French translation of the first volume of Smith's history.

[2] *From the Pennsylvania Evening Post, Philadelphia. Sept.* 17, 1780—By accounts from Fort Clinton, on Hudson River, we learn that the magistracy of the State of New York send their disaffected inhabitants into that place, from whence they are transmitted in vessels under flag of truce to New York City. These persons are discriminated by their refusal to make attestation of their allegiance to the State, and to renounce the tyrant of Britain. It appears that the highest characters are not winked at: the Honorable William Smith, Esq., formerly of the Royal Council under the British government, and author of the History of New York, &c., forced out of his inglorious neutrality, has been lately brought to the test; and refusing the oath, was about four or five weeks since delivered to the enemy through this channel. His Majesty of Britain will be difficulted to provide for his faithful adherents, and may think in earnest of selling Hanover and his other German dominions, to raise a fund equal to their expectations. Where then will such as Mr. Smith, who are justly despised both by Royalists and Americans, find shelter and relief?

[3] *An act to allow the persons therein named to return and remain within the State.*—Whereas, it has been represented to the Legislature that James Jauncey, Abraham C. Cuyler, William Smith, Thomas Jones, Richard Floyd and Henry Lloyd, the elder, are desirous of having permission to return to this State, therefore, be it enacted by the people of the State of New York represented in senate and assembly, and it is hereby enacted by the authority of the same, that the said T. J., A. C. C., W. S., T. J., R. F. and H. L., the elder, severally be and they are hereby permitted to return to and remain within this State unmolested, any law to the contrary notwithstanding.

State of New York, in Senate, March 30, 1790. This bill having been read a third time, resolved that the bill do pass. By order of the Senate. Isaac Roosevelt, Prest., p. h. vice.

State of New York, in Assembly, March 26, 1790. This bill having been read a third time, resolved that bill do pass. By order of the Assembly. Gulian Verplanck, Speaker.

In Council of Revision, 3d April, 1790.—Resolved, that it does not appear improper to the Council that this bill entitled "An act, etc." should become a law of this State.

GEO. CLINTON.

To the Honorable the Legislature, etc.: The petition of David Floyd, of Queens County, farmer (son of Richard Floyd, Esq., formerly of the County of Suffolk), and George Stanton, of the city of New York, agent for Thomas Jones,

Esquire, formerly of the said city of New York, humbly sheweth that the said R. F. and Ths. J., are respectively named in the act of attainder passed in the year 1779. That the petitioners have lately received letters from the said R. F. and Ths. J., intimating their wishes that they might be permitted to return to this State. The petitioners, therefore, in behalf of the said Richard Floyd and Thomas Jones do most humbly pray, that the operations of the said act may be suspended so far as the same respect the said Rd. Floyd and Thomas Jones, and that they may be permitted to return to this State.

And as in duty bound, etc., David Richard Floyd Jones, George Stanton.

New York, Feb. 12, 1790.[4]

[4]Mr. Smith left the city for his country seat at Haverstraw much earlier in the season than customary. His departure was most probably suddenly determined upon in consequence of Governor Tryon having sought security on board of a frigate lying in the harbor; many articles of value were left in his house which were not required for the immediate use of the family in the country. After Mr. Smith's return to the city, in 1778, the following advertisement was inserted the *N. Y. Gazette* of 7th December, 1778:

"When the subscriber retired to Haverstraw in March, 1776, he left in his house in the Broadway, at the corner of Verletenbergh, various articles of furniture, with two trunks of parchments and many bundles of papers in about 40 small deal bound boxes, numbered in the front. He is informed that they were moved out of town in August, 1776, but can't discover who at present has the custody of them. There were also taken away Dr. Mitchell's large map of North America, Mr. Ratse's map of the city, and a manuscript map of the colony of New York; among the papers there are some of great consequence to the estates of many persons in town and country. Satisfactory information, especially concerning the parchments and papers, will be gratefully received and rewarded.

WILLIAM SMITH."

Jones' History of New York asserts that "upon this occasion," viz.: the arrival of General Washington in the city of New York, 13 April, 1776. "William Smith, Esq., accommodated General Washington with his house in town, his brother Tom did the same with his to General Gates, and retired to Haverstraw, about 30 miles from New York, upon the banks of the Hudson, where each had a farm and country seat."

In this connection it is needless to say more than that Mr. Smith had left New York on the 29th March, two weeks before the arrival of General Washington. The residence and headquarters of the commander-in-chief were established at the Mortier house, Richmond Hill; the town headquarters, which are frequently referred to in general orders, etc., were at the corner of Exchange Place and Broadway, and were, it is believed, at the house of Mr. Smith, which seems to have been taken possesssion of as a deserted mansion.

[5] List of Persons Banished by the Commissioners for detecting and defeating Conspiracies, &c., within this State, in pursuance of an Act, etc., entitled: "An Act more effectually to prevent the mischiefs arising from the Influence and Example of persons of Equivocal and suspected Characters within this State:"—

William Smith, Esq., one of the members of the late Council of the King of Great Britain for this State.
Cadwallader Colden, Esq., of Ulster County.
Roeliff I. Ettinge, do do
James Smith, Esq., of Dutchess County.
Cornelius Luyster, Esq., do do
Dirck van Vliet, do do
Samuel Fowler, of Ulster County.
Andrew Graham do do
I. Michael Thorn, do do
Solomon Ettinge, do do
James Peters, of Orange County,
John Terrill, of Dutchess County.
William Lupton, of Ulster County.
Samuel Frame, of Ulster County, confined for exchange, afterward permitted to return to his place of abode.
James Scott, of Dutchess County.
Theophilus Nelson, do do
Richbell Williams, of Dutchess County, is since returned and pardoned.
Lodwick Strydt, of Dutchess County.
Samuel Mabbit, do do

Walter Dubois, of Ulster County.
Agrippa Martin, of Dutchess County.
Myndert Vielie do do
Israel Wood, of Orange County.
Benjamin Booth, do do
John Booth, do do
Zebulon Wallbridge, of Dutchess County.
Richard Harrison, Esq., late of the City of New York.
Joseph Teed, of Dutchess County.
William Brady, do do
Joseph Mabbit, do do
Benjamin Lapham, do do
Richard Bartlett, of Ulster County.
Joost Garrison, do do
Samuel Washburn, do do
Samuel Dickinson, do do
Samuel Peters, do do
Lewis McDonald, of Westchester County.
Stephen Baxter, do do
John Green, do do
James Banks, do do
Abraham Underhill, do do
Benjamin Close, do do
Benjamin Thip, do do
Richard Currie, do do
Gabriel Purdy, do do

Endorsed:

List of Banished Persons.

[6] (*From the New York Journal, June 29, 1778. Printed at Poughkeepsie, by John Holt.*)

AN EASY PLAN TO REDUCE THE REBELLIOUS COLONIES.

By Captain Jolly, arrived at Liverpool, the following letter was received, dated New York, Jan. 10, 1778:

My Lord:

My duty to the King and the melancholy state of his affairs on this Continent command me to deal plainly and truly with your lordship. The overthrow and capture of Gen. Burgoyne and all his army has inspired the base rebels of this country to such a degree of insolence that they are determined to attack Gen. Howe in Philadelphia. In short, my lord, if France enter into treaty with the rebels, I am afraid America will be forever lost to Great Britain; to prevent which permit me, my lord, to say that I think the only means are to cede to France forever:

1.—All Canada, in the state she possessed it before the late war.

2.—To give up Cape Breton and St. John, with all their dependencies.

3.—To cede to them Nova Scotia.

4.—A right to fish on the Banks of Newfoundland as possessed by them before the late treaty of Fontainebleau.

In consideration of those cessions, France on her part,

1.—To cease all connection, correspondence and commerce with the rebel colonies.

2.—To call home all her subjects that are now in the actual service of the rebels, and prevent them in future.

3.—To assist Great Britain with a corps of 12,000 auxilliary troops, to be employed in North America in the service of Great Britain with the British army, in order to reduce the rebels to obedience.

The honor I have of being one of His Majesty's Council, as well as duty and gratitude, have all called for me to give you the best advice for His Majesty's service in my power in this dreadful situation of the King's affairs here, which are such as require some cessions to be made.

I have the honor to be, my lord,

Your lordship's most obedient,

Humble servant,

WILLIAM SMITH.

The writer acknowledges the kindness of Mr. William Kelby, of the New York Historical Society, in calling his attention to this and to other newspaper paragraphs connected with his subject:

(*From the New York Journal, July 20, 1778.*)

POUGHKEEPSIE, July 20, 1778.

MR. LOUDON:*

Seeing in your last paper a letter from Mr. William Smith, desiring your aid in discovering where a letter under his signature, inserted in one of my late papers was copied, I immediately concluded to enable you to gratify his curiosity to the utmost and accordingly wrote a full account, which I intended to publish in my paper of today, but the paper was so filled up that there was not room to insert the piece, which I am, therefore, obliged to defer till next week, when

you may assure Mr. Smith he shall be fully satisfied. I am, etc., JOHN HOLT.

* Samuel Loudon was the printer of the *New York Packet*, at Fishkill.

(*From the New York Journal, July 27, 1778.*)

POUGHKEEPSIE, July 17, 1778.

MR. LOUDON:

In your paper of yesterday, I observed the following letter, viz.:

LIVINGSTON'S MANOR, July 2, 1778.

MR. LOUDON:

I shall be much obliged to you for your aid in discovering whether the malicious forgeries in Holt's paper of the 29th of June, purporting to be a letter from me to some noblemen on the other side of the water, and dated at "New York, the 10th of January, 1778," is wholly or in part taken from any other and what paper.

To all who know me, and that I have not been out of this neighborhood since the 7th of June, 1777, I need not make the declaration (which I can with truth) that I have not written a line to any person in Great Britain; nor even in New York, for thirteen months past, except by flags, and open for inspection; and therefore, an exculpatory oath would scarce be justifiable to defeat a calumny so artfully contrived, as to carry with it a detection of its own falsehoods.

In condescension, however, to the weak, and for the satisfaction of others at a remote distance, who might be uninformed of my situation, I beg you to publish this letter in your next paper. This is the second attempt within two years, to palm a frantic, nonsensical letter upon the public, as mine, and probably as both were dated at a place where I then was not, they are the work of the same hand. The assassin, if not a worse character, must at least be one of those fanatics, common in turbulent times, who, confident that they are right in their aims, give themselves no concern about the means, regardless of the divine injunction prohibiting evil and immoral acts, though conducive to the most laudable and excellent ends.

I am your most obedient servant,

WILLIAM SMITH.

This letter I publish at large, not only because I intend to make some remarks upon it, but also for the sake of justice to Mr. Smith, that his vindication may appear in the same paper where the piece that gave occasion to it was inserted, and which he calls *a malicious forgery*. In the first paragraph of his letter, Mr. Smith seems to be extremely solicitous to find out "whether it was wholly or in part, taken from any other and what paper." It would have been a more direct way for Mr. Smith to obtain a satisfactory answer to his inquiry, if instead of his writing to you, who had no concern in the subject of it, he had directed his letter to me, who live at a much less distance from him, and could have given him more certain and satisfactory information. But since he has chosen this roundabout way to do it, by writing to you to inquire of me (unless it had happened, that you should have been able to inform him of your own knowledge, without such inquiry, in which case the publication in your paper would have been unnecessary), I shall follow his method, and instead of answering him myself, enable you to answer him. However, as I imagine his manner of proceeding in this affair has excited the curiosity of many other of your readers, as well as myself, and may have given occasion for some conjectures to my disadvantage, especially as he has in his letter mentioned and treated me in a manner somewhat disrespectful, I think it necessary to declare my conjectures as to the reasons of his conduct.

If he had written immediately to me, it would not have given room to publish an insinuation, that I had refused to give him the satisfaction he solicits you to procure him; nor that my refusal might arise from my privity to the forgery and malicious design of the writer. And as I can think of no other reason, I am of opinion that Mr. Smith has taken this indirect way of inquiry, merely to introduce these insinuations, give them the appearance of realities, and avail himself of the opinions they might suggest in his favor.

I think as far as Mr. Smith's letter concerns me, I have given the true and natural meaning of it, as it will be understood by readers in general; and that, by every one who gives full credit to it, in the sense in which he intended it should be understood, I shall appear exactly in such a light as I have represented; and if so that he has

not done me justice must appear by my publishing his vindication. that he may receive all the benefit it can afford him; and by the account I shall now give you, for his use, of the piece published in my paper of 29th June, which he complains of as a malicious forgery. The account is as follows, viz.:

On the 10th of June I set out from Poughkeepsie on a journey to Boston; on my way, at New Haven, about the 22d of June, I first saw the piece in question, published in an Eastern paper. I also saw it at several other places on my journey, and at Boston in the papers printed there, particularly in a paper of the 18th of June, published by Mr. John Gill. From this paper it was my people took the copy published in my paper of the 29th. And this Boston paper sets forth, that on board a prize brig of 14 guns, bound from Scotland to New York, but taken and carried into Boston by Capt. Croly, were found Scotch newspapers to the 11th of April, from one of which, under the London head, March 20th, the said piece signed William Smith was taken. But I have written to Mr. Gill desiring him to inform me exactly where it was taken and the date of the paper, which, as soon as I know, I shall endeavor through you to communicate to Mr. Smith.

I gave no orders for inserting the piece in my paper, nor knew anything of its being there till I saw it. However, I was far from being displeased that my people, though without my order, had inserted it, since it gave Mr. Smith an opportunity to vindicate himself if innocent, and his country to know him, if guilty.

Mr. Smith knows whether he has reason to believe that any person on the other side the Atlantic (where, it is hardly to be doubted, that both this and the former letter with his name subscribed, were originally published) is so rancorously disposed towards him; and of so villainous a character as, without any apparent advantage to himself maliciously to forge these letters in his name merely to ruin his character and deprive him of the confidence and esteem of his country. The public will judge of the probability of this according to the evidence Mr. Smith shall produce. Meanwhile, it is thought surprising that though he anxiously labors to make it appear that he is not the author of the letters published in his name, he has never once clearly and positively denied that he is. At least, readers in general think so. I shall at present confine myself to the last, wherein he says—"*he need not declare—though he can with truth—that he has not written a line to any person in Great Britain, or even in New York, for thirteen months past, except by flags, and open to inspection.*" But he has not denied that he has written to a person somewhere else who might have conveyed his letter to the person it was intended for. Nor is it certain that some of these flags were not vehicles of a traitorous correspondence with the enemy; or, that though his letters might be left open to inspection, he might not be assured they would not be inspected, or would be inspected only by such as would approve and deliver them. He affects to think "*An exculpatory oath unnecessary, for that the calumny is so contrived as to defeat itself and carry with it a detection of its own falsehood.*" But in this last he may be assured he deceives himself; for, even if the letter in his name is a forgery, it is not thought so by most that see it, more especially by those that have seen his exculpatory letter. Nor is it probable an oath to the same purpose would have a better effect.

Less efforts than these would be sufficient to defeat a calumny against a man who had acted with uniformity as a friend to the rights and liberty of America; but no arguments or oaths will probably be effectual to restore to the love and confidence of his country a man who would do nothing to assist it in time of danger, nor give it any satisfactory assurances that he would not join its enemies the moment he could do it with safety to his person and property. The subject naturally led me to these reflections which in no respect arose from enmity to Mr. Smith, whom I always respected and esteemed, except so far as I have thought his public conduct blameable; nor in what I now write of him have I more declared my own sentiments than the public opinion.

I am yours, etc.,

JOHN HOLT.

Notwithstanding Mr. Holt's intimation that the subject was to be continued in the columns of the *New York Journal*, a search has failed to reveal any other reference to the matter. It is

not impossible but that Mr. Smith replied to Mr. Holt's extraordinary article by a letter to Loudon's *New York Packet*, printed at Fishkill, and that this reply was of so convincing and thorough a character that Mr. Holt concluded not to reprint or to notice it. Unfortunately—and little to the credit of the public libraries of New York—no complete set of the *New York Packet* exists among them, and the copy owned by the American Antiquarian Society at Worcester is found to contain but about one-half of the issues of the paper for the last half of 1778; in these nothing appears relative to the Smith-Holt matter. Perhaps some one of the owners of the separate numbers of the *New York Packet* scattered throughout the country may possess and be induced by these notes to reprint the sequel to the correspondence, which is certainly not complete with what is here given.

[7] The order of the Provincial Congress is especially complimentary to Mr. Smith. It directs that the letters received for him "which were sent open, but enclosed together, be enclosed, sealed up and certified by the President to have been sealed up in the Congress without having been perused," and be so delivered to him. (*Journals Provincial Congress, Vol. I, p.* 748.)

[8] *To the Honorable, the Representatives of the State of New York, in Senate and Assembly convened:*

The petition of Andrew Bostwick and William S. Livingston, of the City of New York, gentlemen,

Humbly sheweth:—That your petitioners and their connections are interested in a very considerable real estate, of which William Smith, Esq., deceased, died seized; that the said estate cannot be settled and your petitioners receive their just due, owing in a great degree to the absence of William Smith, Esq., one of the executors, who, by a law of this State, passed the 30th day of June, 1778, is prohibited from returning to or becoming a resident of this State. That independent of the personal interests of your petitioners, they do assure this Honorable House that there is in the care and possession of said William Smith property and papers which he holds in trust, or in common with others, of great value to many citizens of this State, which can only be accounted for by the said William Smith in person. That, notwithstanding your petitioners are fully confident that it is not the interest of the said William Smith to again become a citizen of this State, yet they have the fullest assurance that he will, on permission for that purpose being first obtained, return to this State for the settlement of the affairs of those citizens over which he has either had charge or been interested in.

Your petitioners, therefore, pray that his name be inserted in the Act granting permission for certain proscribed persons again to return to the State as in duty bound.

They will ever pray, etc.,

AND'W BOSTWICK.

WILLIAM S. LIVINGSTON.

Endorsed: A petition of Andrew Bostwick and Wm. S. Livingston, that William Smith, Esq., may be permitted to return into this State. In Assembly, Feb. 18, 1790, read and committed to a Committee of the whole House on the bill to permit persons therein named to return into this State.

No. 144.

Assembly Journal, p. 42. *Thursday*, 10 o'clock A. M., *Feb.* 18, 1790.—A petition of And'w Bostwick and William S. Livingston praying permission, etc. (like the endorsement).

Assembly Journal, p. 94. *Thursday*, 9 o'clock A. M., *March* 25, 1790. * * * * * Mr. Hitchcock, from the Commtttee of the whole House on the bill entitled: "An act to allow the persons therein named, etc.," reported that after the Committee had inserted the names of sundry persons therein the enacting clause was again read for the approbation of the Committee, as follows, viz.:

"Be it enacted by the people of the State of New York, etc.: That James Jauncey, Abr. C. Cuyler, William Smith, William Axtell, Thomas Jones, Richard Floyd and Henry Lloyd, the elder, severally be and they are hereby permitted to return to and remain within this State unmolested, any law to the contrary notwithstanding."

Agreed to by a vote of 32 yeas against 18 noes and Ordered, that the bill be engrossed.

Senate Journal, p. 45. *Friday*, 5 o'clock P. M., *March* 26, 1790.—A message from the Honor-

able, the Assembly, by Mr. Van Cortlandt and Mr. Marvin was received, with the following two bills for concurrence, viz., the bill entitled "An act to allow the persons therein named, etc., etc.," which were read a first time and ordered a second reading.

Ibidem. Saturday morning, March 27, 1790. —The bill entitled "An act to allow the persons, etc.," was read a second time and committed to a Committee of the Whole.

Ibidem, page 49. *Tuesday, March* 30, 1790.— Mr. Williams, from the Committee of the Whole, to whom was referred a bill entitled "An act to allow the persons, etc.," reported that the Committee had gone through the bill, made amendments thereto and agreed to the same. The report was read and the amendments agreed. Thereupon, "Resolved, that the bill as amended do pass."

[9] Anno, 1730, the first of November, being Sunday, at two o'clock in the morning, is our daughter, Jennet, born, and on the following Sunday held in baptism by Mistress Cornelia Schuyler, and received in holy baptism by Domine Walter DuBois. Cousin John Schuyler, junior, godfather, Mother Magarieta Livingston, godmother. May the Lord bless her and raise her in joy to salvation. (Family bible of James Livingston, translated from the Dutch).

[10] The baptismal registry of the First Presbyterian Church of New York, gives the date of birth of eight and the date of baptism of nine out of the ten children of Chief Justice and Jennet Smith. These compared with a copy of the family bible of the Chief Justice agree, except in one trifling difference, as noted in the text.

DESCENDANTS OF WILLIAM SMITH

I. JENNET SMITH, born Sunday, 25th November, 1753; died in England, 8th August, 1828. Married in New York, 21st October, 1771, Lieutenant, afterwards General John Plenderleath, of Glen, County of Peebles, Scotland, a gentleman of large estate.* She survived her husband, who left four sons and two daughters. Three of the sons were distinguished in the British army; the fourth, a surgeon, served and lost his life in the Peninsula campaign, under the Duke of Wellington, and is honored with a monument to his memory in Westminster Abbey. Her elder children were born in New York.

* The following notice afterward appeared in the New York Gazette, of November 4, 1771: "The 21st of October, at night, was married Lieutenant John Plenderleith, of the Royal Artillery, to Miss Jennet Smith, daughter of the Hon. William Smith, Esq. A young lady endowed with all the accomplishments requisite to render the marriage state happy."

II. MARY SMITH, born 27th May, 1755; baptized 15th June following, by the Rev. Aaron Burr, President of the College of New Jersey; died 13th June, 1759.

III. ELIZABETH SMITH, born 26th January, 1757; died unmarried, at her father's country seat, Haverstraw, on the North River, 12th September, 1776, in the twentieth year of her age. The distress occasioned by the divisions among her family and friends engaged in opposite sides in civil strife, is said to have caused her death.

IV. MARY SMITH, born 28th December, 1759; married Lieutenant-General William Doyle, of Waterford, Ireland, and left two sons and one daughter.

V. MARGARET SUSANNA SMITH, born 25th October, 1761 (baptismal registry gives the date of birth as 21st October, 1761); died 22d August 1765.

VI. WILLIAM LIVINGSTON SMITH, born 26th September, 1763; died 28th August, 1764.

VII. MARGARET SMITH, born 26th September, 1765; died 31st August, 1766.

VIII. HON. WILLIAM SMITH, the only son who survived infancy, born 7th February, 1769, of whom presently.*

IX. LIVINGSTON SMITH, born 8th of June, 1770; died 16th September, 1770.

X. HENRIETTA or HARRIET SMITH, born in the city of New York, 6th February, 1776; died at Quebec, Canada, 26th May, 1849; married 24th of September, 1796, Jonathan Sewell, Chief Justice of Lower Canada. Chief Justice Sewell was born 6th June, 1766, and died at Quebec, 12th November, 1839; was a member and for many years was President of the Executive Council and also Speaker of the Legislative Council and LL. D., Harvard. Chief Justice and Harriet Sewell had sixteen children.

I. HENRIETTA, born 18th July, 1797; died 1st August, 1797.
II. WILLIAM, born 28th May, 1798; died 1st June 1866; sheriff of Quebec.
III. EDMOND, born 3d September, 1800, in Holy Orders.
IV. ROBERT, born 30th December, 1803; died 1834; barrister.
V. MARIA, born 26th January, 1804; died at Quebec 2d April, 1881; married Major Temple, 15th Regiment, and left issue.
VI. HENRY, born 21st October, 1806; in Holy Orders.
VII. HENRIETTA, born 14th October, 1808; died 17th November, 1847.
VIII. JAMES, born 31st August, 1810. Physician.
IX. MONTAGUE, born 24th August, 1812; died 28th February, 1859.
X. FRANCIS, born 5th January, 1816.
XI. ALGERNON, born 31st August, 1817; died 10th 1875; Colonel 15th Regiment.
XII. ELIZA, born 21st July, 1819; died 1875; married John Ross of Quebec and left issue.
XIII. CHARLOTTE, born 8th July, 1814; died 31st December, 1826.
XIV. A GIRL, stillborn.
XV. & XVI. TWINS, a boy and girl; who died in infancy.

* The Hon. William Smith, the only son of Chief Justice and ~~Susanna~~ Smith, who survived infancy, was born in the city of New York, 7th February, 1769, and died at Quebec, Canada, on the 17th of December, 1847. At the close of the Revolution he sailed with his father for England and was sent to continue his studies commenced in New York, to a Grammar school at Kensington. When his father was appointed Chief Justice of Canada, young Smith accompanied him to that province, arriving at Quebec, 23d October, 1786. He was appointed Clerk of the Provincial Parliament and presently made a Master in Chancery. In 1814, he was advanced by Earl Bathurst to a seat in the Executive Council. William Smith, also, served as Lieutenant Colonel of the Third Battalion of the Quebec militia. He was the author of Smith's History of the Province of Canada, from its first discovery to the year 1791, two volumes, Quebec, 1815. The work, which is now rare and much sought after by book collectors, is incorrectly attributed by the Doc. Col. History of the State of New York, Vol. VIII, p. 62, to Chief Justice Smith, the father of the author.

William Smith married Susan, who died at Quebec, 26th January, 1850, daughter of Admiral Charles Webber, of the county of Hampshire, England, by whom he left five children.

I. WILLIAM BOUDENELL SMITH, late Colonel of the 15th Regiment; resides in England. Colonel Smith married Caroline, daughter of Lieut. Colonel Grierson and sister of Major General Grierson. and has an only child, married to Lieut. Colonel Warren, of the 78th Highlanders, of the Warrens of Warren Court, Baronets, and has issue.
II. CHARLES WEBBER SMITH, of London; married Anna Chelworth and died in 1879 without issue.
III. EMILY ANN SMITH, married the Rev. George, son of General Mackie, late Governor St. Lucia, and left issue.
IV. LOUISA JANET SMITH, married her cousin Robert Sewell, son of the Chief Justice, and left issue.
V. CAROLINE SUSANNA SMITH, married Henry, son of Andrew Stewart, of Quebec, and left issue.

ERRATA

APRIL NUMBER:

The engraved etching of Judge Smith is from a *life size portrait* of the judge, painted by Wollaston, and not from a *miniature*.

Page 271, line 1. Strike out the word *England* and read *Connecticut*.

Page 282, line 8, second column. Strike out the single quotation mark.

JUNE NUMBER:

Page 430, line 14. Strike out the words *son-in-law*. Dr. Mallet married Mary Livingston, a niece of Mrs. Smith; see page 276.

Page 430, line 15. Strike out the word *son* and read *brother-in-law*; see page 278.

Page 439, line 28. Strike out the word *Susannah*, and read *Jennet*.

ADDENDA

Mrs. Elizabeth Smith, to whom allusion is made on p. 271, the widow of Colonel Elisha Williams, of Connecticut, and second wife to Hon. Judge William Smith, whom she survived, died 13th June, 1776, at the house of Sheriff Williams, Westerfield, Conn. See genealogical notes, etc., of the first families of Connecticut and Massachusetts, by Nathaniel Goodwin, and the Williams Genealogy, 1847.

MATURIN L. DELAFIELD

FIELDSTON, *June*, 1881

OCT 24 1944